HOA FORECLOSURE DEMAND LETTERS

DAVID Z. CONOLY
David Z. Conoly, P.C.
1930 Glenoak Drive
Corpus Christi, Texas 78418
dzc@dzclaw.com
(361) 937-6400
Fax (361) 937-6846

State Bar of Texas
HANDLING YOUR FIRST (OR NEXT)
HOA ASSESSMENT LIEN FORECLOSURE
FOR CONDOS AND SUBDIVISIONS
November 14, 2014
Austin

CHAPTER 5

Guide to Using This Course Book

This article is one chapter of a 12-chapter course book for "Handling Your First (or Next) HOA Assessment Lien Foreclosure for Condos & Subdivisions," a 6.25 hour CLE Course presented by TexasBarCLE on November 14, 2014. The course has a faculty of twelve Texas attorneys, each of whom authored one of the chapters.

Most TexasBarCLE courses include a compilation of independent articles, each standing on its own. However, this course is intended to be a practical, step-by-step guide through the foreclosure process. As such, each chapter builds on the others, and the chapters are interrelated. Also, additional resource materials that relate to multiple chapters are included at the end of the course book. Accordingly, one cannot realize the full benefit of any one chapter (article) without having the entire course book.

If you are not a subscriber to the TexasBarCLE Online Library (which gives you unlimited access to the entire library), consider purchasing the entire course book by visiting “Publications” at TexasBarCLE.com. There you will have the option of purchasing the hard copy course book (which includes a single PDF file of the book) or a single PDF file of it at a discount. Either option will cost considerably less than purchasing the 12 chapters individually from the Online Library.

DAVID Z. CONOLY

David Z. Conoly, P.C.
1930 Glenoak Drive
Corpus Christi, Texas 78418
Phone: (361) 937-6400; Fax: (361) 937-6846
Email: dzc@dzclaw.com

Current Practice

Licensed to practice law in Texas in November 1978. Practice has focused on residential, commercial, and farm and ranch real estate law. Experience includes entity creation, real estate development, ranching and rural land law matters, conveyancing, construction, lending and land use, workouts, foreclosures, formation and financing of condominium and commercial developments, real estate title litigation, and a broad range of commercial and residential financing transactions. Representative clients include trade organizations (such as Corpus Christi Association of Realtors, Builders Association - Corpus Christi Area, Corpus Christi Apartment Association), property owners (large and small), businesses, property owner associations, landlords and tenants, title insurance agencies and underwriters, and lenders and borrowers.

Education

Graduate Studies: S.M.U. School of Law, Juris Doctor, 1978
Undergraduate studies: Southern Methodist University, Bachelor of Science, 1975

Professional Credentials

American College of Real Estate Lawyers - Member
Texas Board of Legal Specialization
    Residential Real Estate Law (1983-present)
    Farm & Ranch Real Estate Law (1983-present)
    Commercial Real Estate Law (1983-present)
State Bar College - Member (1989-present)
Pro Bono College - Member (2005-present)

Professional Activities

State Bar of Texas Real Estate Forms Committee: 1985 - 1999 (Chair 1996-1999)
State Bar of Texas Grievance Committee Professional Enhancement Program
    Corpus Christi District: 1995 - 1998 (Chair)
State Bar of Texas Real Estate, Probate and Trust Law Section (REPTL) - Council Member (1998-2001)
    Water Rights Committee 1998 - 2001 (Chair 1998-2001)
    Website Committee 1998-2007 (Chair 2003-2007)
State Bar of Texas Legal Specialization Exam Committee
    Commercial Real Estate 1996-2004 (Chair 2003-2004)

Speaking Engagements/Legal Publications

Author/Speaker for the State Bar of Texas Advanced Real Estate Drafting Course
Author/Speaker for the State Bar of Texas Advanced Real Estate Law Course
Author/Speaker for South Texas College of Law Advanced Real Estate Law Conference
Author/Speaker for SMU School of Law Real Estate Law: Mortgages In-Depth Seminar
Author/Speaker for The University of Texas School of Law Mortgage Lending Institute
Author/Speaker for the State Bar of Texas Changing Face of Water Rights in Texas
Author/Speaker for The University of Texas School of Law Land Use Planning Law Conference

HOA Foreclosure Demand Letters

HOA Foreclosure Demand Letters

I. INTRODUCTION

The primary focus of this article is to provide guidance by the attached forms for the pre-foreclosure demand letters sent by and on behalf of the HOA demanding payment of delinquent assessments from the delinquent association member, including: (a) the HOA's initial notice of assessment [See separate form HOA invoices for a condominium HOA and for a subdivision HOA]; (b) the HOA's demand for payment of delinquent assessment [See separate form HOA initial demand letters for a condominium HOA and for a subdivision HOA]; (c) the attorney's demand for payment, notice of default and notice of intent to foreclose [See separate form HOA attorney notice of intent to foreclose letters for a condominium HOA and for a subdivision HOA]; and (d) the HOA attorney's notice of foreclosure [See separate form HOA attorney's notice of foreclosure letters for a condominium HOA and for a subdivision HOA]. The seminar articles include:

(1) Framing the HOA Foreclosure;
(2) Laws Affecting HOA Liens and Foreclosures;
(3) HOA Pre-Foreclosure Due Diligence;
(4) Types of HOA Debts and Liens;
(5) HOA Foreclosure Demand Letters (this article);
(6) Expedited HOA Foreclosures (non-condos);
(7) Non-Judicial HOA Foreclosures;
(8) Non-Judicial HOA Foreclosures;
(9) Judicial HOA Foreclosures;
(10) Detours in the HOA Foreclosure Process;
(11) Rights of Redemption and Other HOA Post Foreclosure Considerations; and
(12) How to Avoid a Wrongful HOA Foreclosure Lawsuit.

This article on demand letters is intended to serve as a "chapter" in a book relating to HOA foreclosures. Therefore, I have limited this article to demand letters. I have included within this article a discussion, with forms, of the attorney engagement process. In my law practice, the engagement process is an integral part of the attorney's role in seeking payment of assessments and related amounts from delinquent owners.

The seminar article addressing HOA Pre-Foreclosure Due Diligence addresses the requirement that subdivision HOAs provide a 60 day notice and right to cure to subordinate lien holders (Due Diligence article contains a form notice to a subordinate lien holder) [See TPC §209.0091]. Therefore, I have not addressed notices to inferior lien holders in this article.

This article is intended only for attorneys familiar with Texas real estate law generally. This article's comments and forms depend upon the attorney's individual analysis of the particular facts in the case for their application. Therefore, non-attorneys should not use the contents of this article without representation by an attorney familiar with Texas real estate law.

II. DEFINITIONS

The terms defined in this article are intended for use with this article only. They may or may not be consistent with the terminology used in other articles or in the Topical Glossary.

HOA	Means a mandatory membership association of residential property owners, no matter how it is named in its own governing documents, applicable to both condominiums and subdivisions, unless preceded by a word of limitation, such as "Subdivision HOA" or "Condominium HOA."
Condominium HOA	Means an HOA with jurisdiction over a condominium project.
Owner	Means an owner of property in a subdivision and/or a condominium.
Subdivision HOA	Means an HOA with jurisdiction over a subdivision, including a townhome project.
TPC	Means the Texas Property Code.

III. HOA FORECLOSURE STATUTES

A. Introduction.

Statutes affecting foreclosures include: (a) TPC Chapters 51 and 202 which affect both Subdivision HOAs and Condominium HOAs; (b) TPC Chapter 82 affecting only Condominium HOAs; and (c) TPC Chapter 209 affecting only Subdivision HOAs.

B. Statutes Affecting Both Subdivision HOAs & Condominium HOAs

1. TPC Chapter 51 - Summary of Selected Provisions. The following is a summary of selected provisions from TPC Chapter 51, which is includes the primary provisions applicable to liens.

a. Security Instrument Includes Contract Liens. Under TPC §51.0001, the term "Security Instrument" includes a contract lien on an interest in real property.

b. Effect on Other Liens. TPC §51.001 provides that the statutes in the Liens Subtitle of the TPC do not exclude the creation of liens by special contract or agreement, or liens arising under common law, in equity, or under another Texas statute.

c. Foreclosure Sale of Real Property Under Contract Lien. TPC §51.002 is the guiding nonjudicial foreclosure statute which provides the required procedures for lienholders to follow in performing nonjudicial foreclosures under a power of sale. The requirements for the notice-of-intent and the notice-of-foreclosure are part of this statute.

d. Obligation of Debtor to Notify of Change of Address. TPC §51.0021 requires a debtor to notify the lienholder of a change of the debtor's address.

e. Deed-of-Trust Foreclosure After Deed in Lieu of Foreclosure. TPC §51.006 allows, under certain circumstances, a lienholder who received a deed in lieu of foreclosure, to later foreclose on the deed of trust lien upon learning that an undisclosed lien existed on the property at the time the deed in lieu was taken.

f. Foreclosure of Property Owned by Member of Military. TPC §51.015 makes special requirements for foreclosures during, and 9 months after, active military service. This statute is discussed in greater detail in this article under the heading "Military Service Status".

2. TPC Chapter 202: Summary of Selected Provisions.

a. Introduction. TPC Section 202, entitled Construction and Enforcement of Restrictive Covenants, applies to both Subdivision HOAs and Condominium HOAs.

b. Definitions for Dedicatory Instrument & Property Owners' Association. TPC §202.001 provides a broad definition for "Dedicatory instrument" to include not only the dedication document(s) (i.e. the declaration), but also includes the rules and regulations, the bylaws and other documents governing the association (presumably including the formation document), and all amendments. The term "Property owners' association" is also broadly defined to include both subdivision HOAs and condominium HOAs.

c. Board Decisions Presumed Reasonable. TPC §202.004(a) provides that: "An exercise of discretionary authority by a property owners' association or other representative designated by an owner of real property concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory." This is an important standard which places the burden of proof on the owner against the HOA.

d. Governing Documents Must Be Recorded to be Valid. TPC §202.006 requires an HOA to file all dedicatory instruments in the real property records of each county in which the property to which the dedicatory instruments relate is located. Under this statute, a dedicatory instrument for a subdivision HOA or a condominium HOA has no effect until the instrument is recorded according to this statute.

C. Selected Statutes Affecting Only Subdivision HOAs.

1. Introduction to TPC Chapter 209. TPC Chapter 209 affects only subdivision HOAs, and is intended to protect owners from an overbearing subdivision HOA.

a. Foreclosure Must be Authorize at Open Board Meeting. TPC §209.0051 requires enforcement action (such as a foreclosure) to be authorized only at open board meetings requiring the following: "Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be: (1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or (2) provided at least 72 hours before the start of the meeting by: (A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members: (i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or (ii) on any Internet website maintained by the association or other Internet media; and (B) sending the notice by e-mail to each

owner who has registered an e-mail address with the association.
In addition, the board is required to keep written minutes of the meeting.

b. Requirement for Payment Plans. TPC §209.0062 requires subdivision HOAs with more than 14 lots to adopt reasonable guidelines to establish an “alternative payment schedule” for repayment of delinquent assessments and other amounts without incurring additional monetary penalties. However, a reasonable charge for administering a payment plan is permitted. The minimum term for a payment plan offered by a subdivision HOA is three months, and the plan may not extend more than 18 months from the date of the owner's request for a payment plan.

c. Priority of Payments. TPC §209.0063 dictates the application of payments to a subdivision HOA in the following order of priority: (1) any delinquent assessment; (2) any current assessment; (3) any attorney's fees or third party collection costs incurred by the HOA associated solely with assessments or any other charge that could provide the basis for foreclosure; (4) any attorney's fees incurred by the HOA that are not subject to Subdivision (3); (5) any fines assessed by the HOA; and (6) any other amount owed to the HOA. If the owner is in default under a payment plan entered into with the subdivision HOA, the HOA is not required to apply the payment in the order of priority specified; however, in applying the payment, a fine assessed by the HOA may not be given priority over any other amount owed to the HOA.

d. Attorney Fees: Subdivision HOA Limitations.

(1) 30 Day Notice & Right to Cure Required. Under TPC §209.0064, a subdivision HOA may not hold an owner liable for fees of an attorney (a “collection agent”) retained by the HOA, unless the HOA first provides written notice to the owner by certified mail, return receipt requested, that: (1) specifies each delinquent amount and the total amount of the payment required to make the account current; (2) describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and (3) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken. This notice should be provided by the subdivision HOA before the attorney is engaged. If the HOA does not have the forms necessary to accomplish this step, then the first order of business for the attorney should be to provide this form for future use.

(2) Separate Notice & Right to Cure Requirement. TPC §209.008 provides that a HOA may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the HOA relating to collecting amounts, including damages, due the HOA for enforcing restrictions or the bylaws or rules of the HOA only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain. This notice should be provided by the subdivision HOA before the attorney is engaged. If the HOA does not have the forms necessary to accomplish this step, then the first order of business for the attorney should be to provide this form for future use.

(3) Fees Deposited in HOA Account. TPC §209.008 provides that all attorney's fees, costs, and other amounts collected from an owner shall be deposited into an account maintained at a financial institution in the name of the HOA or its managing agent. Only members of the HOA's board or its managing agent or employees of its managing agent may be signatories on the account.

(4) Copies of Invoices May Be Required. TPC §209.008 provides that, on written request from the owner, the HOA shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the HOA seeks reimbursement of fees and costs.

(5) Limitations on Amount of Attorney Fees for HOA Foreclosures. The amount of attorney's fees that an HOA may include in a nonjudicial foreclosure sale for an indebtedness covered by an HOA's assessment lien is limited to the greater of: (1) 1/3 of the amount of all actual costs and assessments, excluding attorney's fees, plus interest and court costs, if those amounts are permitted to be included by law or by the restrictive covenants governing the property; or (2) $2,500. This does not prevent an HOA from recovering or collecting attorney's fees in excess of the amounts prescribed, by other means provided by law.

(6) Foreclosure Sale Prohibited if Solely for Fines & Attorney Fees. An HOA may not foreclose a HOA's assessment lien if the debt securing the lien consists solely of: (1) fines assessed by the HOA; (2) attorney's fees incurred by the HOA solely associated with fines assessed by the HOA; or (3) costs for records production under §209.005(i). TPC §209.009.

e. Subordinate Lienholder: Notice & 60-Day Right to Cure. An HOA may not foreclose an HOA assessment lien on real property by giving notice of sale under Section 51.002 or commencing a judicial foreclosure action unless the HOA has: (a) provided written notice of the total amount of the delinquency giving rise to the foreclosure to any other subordinate holder of a subordinate deed of trust lien; and (b) provided a 60 day period to cure the delinquency. Notice must be sent by certified mail, return receipt requested, to the address for the lienholder shown in the deed records relating to the property subject to the lien. TPC §209.0091.

f. Expedited Judicial Approval Required for Nonjudicial Foreclosure. An HOA may not actually foreclose an HOA assessment lien unless the HOA first obtains a court order in an application for expedited foreclosure. Expedited foreclosure is not required if the Owner agrees in writing to waive expedited foreclosure. A waiver may not be required as a condition of the transfer of title to real property. However, the owner may waive this requirement. TPC §209.0092.

D. Selected Statutes Affecting Only Condominium HOAs.

TPC §82.113, which applies to both TUCA and pre-TUCA condominiums, sets up the assessment collection system by providing:

1. Broad Definition for "Assessment". "Assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the association, all of which are enforceable as assessments under this section unless the declaration provides otherwise. TPC §82.113(a).

2. Personal Obligation Secured by the Unit. "An assessment levied by the association against a unit or unit owner is a personal obligation of the unit owner and is secured by a continuing lien on the unit and on rents and insurance proceeds received by the unit owner and relating to the owner's unit. TPC §82.113(a).

3. Assessment Lien Priority. The association's lien for assessments has priority over any other lien except:

(a) ad valorem real property taxes and other government charges;

(b) a lien recorded before the declaration is recorded;

(c) a "first deed of trust lien" recorded before the date on which the assessment sought to be enforced becomes delinquent under the Governing Documents; and

(d) unless the declaration provides otherwise, a lien for construction of improvements to the unit or an assignment of the right to insurance proceeds on the unit if the lien or assignment is recorded or duly perfected before the date on which the assessment sought to be enforced becomes delinquent under the Governing Documents. TPC §82.113(b).

4. Perfection of Assessment Lien. The HOA's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required. TPC §82.113(c).

5. Power of Sale. By acquiring a unit, a unit owner grants to the HOA a power of sale in connection with the HOA's lien. By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the HOA to exercise the power of sale on behalf of the HOA. Except as provided by the declaration, a HOA shall exercise its power of sale pursuant to Section 51.002. TPC §82.113(d).

6. Foreclosure. The HOA has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by the statute or the declaration. TPC §82.113(e).

7. No Foreclosure for Fines. The HOA may not foreclose a lien for assessments consisting solely of fines. TPC §82.113(e).

8. Costs Added to Amount Owed. Costs of foreclosure may be added to the amount owed by the unit owner to the HOA. TPC §82.113(e).

9. HOA May Purchase at Foreclosure. The HOA may bid for and purchase the unit at foreclosure sale as a common expense. The HOA may own, lease, encumber, exchange, sell, or convey a unit. TPC §82.113(f).

10. Right of Redemption. The owner of a unit purchased at a foreclosure sale of the HOA's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. TPC §82.113(g).

11. Right to Notify Other Lien Holders. After a unit owner defaults in the owner's monetary obligations to the HOA, the HOA has the right to notify other lien holders of the default and the HOA's intent to foreclose its lien. TPC §82.113(h).

12. Notice to Lien Holders Requesting Notice. The HOA shall notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the HOA a written request for notification of the unit owner's monetary default or the HOA's intent to foreclose its lien. TPC §82.113(h).

13. Deed in Lieu of Foreclosure. The HOA condominium statute does not prohibit the HOA from taking a deed in lieu of foreclosure. TPC §82.113(i).

14. Suit to Recover Money Judgment. The HOA condominium statute does not prohibit the HOA from filing a suit to recover a money judgment against the owner. TPC §82.113(i).

15. Owner's Right to Avoid Foreclosure by Payment. At any time before a nonjudicial foreclosure sale, a unit owner may avoid foreclosure by paying all amounts due the HOA. TPC §82.113(j).

16. Homestead Status Prevents Assessment Lien from Commencing. If, on January 1, 1994, a unit is the homestead of the unit owner and is subject to a declaration that does not contain a valid assessment lien against the unit, the lien provided by the HOA condominium foreclosure statute does not attach against the unit until the unit ceases to be the homestead of the person owning it on January 1, 1994. TPC §82.113(k).

17. Assessment Lien Secures Post-Tax Lien Foreclosure Assessments. Foreclosure of a tax lien attaching against a unit under Chapter 32, Tax Code, does not discharge the HOA's lien for assessments under this section or under a declaration for amounts becoming due to the HOA after the date of foreclosure of the tax lien. TPC §82.113(l).

18. Owner's Lien Holder & HOA May Share Information. If a unit owner is delinquent in payment of assessments to a HOA, at the request of the HOA a holder of a recorded lien against the unit may provide the HOA with information about the unit owner's debt secured by the holder's lien against the unit and other relevant information. At the request of a lien holder, the HOA may furnish the lien holder with information about the condominium and the unit owner's obligations to the HOA. TPC §82.113(m).

E. Condominium Statutes Relating to Attorney Fees.

1. TPC §82.117. Obligations of Unit Owners. This statute is applicable only to TUCA Condominium HOAs, and provides that the unit owner is liable to the association for violations of the declaration, bylaws, or rules of the association, including any amendments, by the owner, an occupant of the owner's unit, or the owner or occupant's family, guests, employees, agents, or invitees, and for costs incurred by the association to obtain compliance, including attorney's fees whether or not suit is filed.

2. TPC §82.161. Effect of Violations on Rights of Action and Attorney's Fees. This statute, which applies both to TUCA and TCA Condominium HOAs, provides that the prevailing party in an action to enforce the declaration, bylaws, or rules is entitled to reasonable attorney's fees and costs of litigation from the nonprevailing party.

3. TPC §82.113. Association's Lien for Assessments. This statute applies both to TUCA and TCA Condominium HOAs. Paragraph (a) of this statute provides as follows: In this section, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the association, all of which are enforceable as assessments under this section unless the declaration provides otherwise.

IV. STEP 1. HOA ASSESSMENT INVOICE

A. General.

The first step in the collections process should be invoice from the HOA.

B. Form of Invoice.

I recommend a written notice that includes both an itemized invoice for the current charges, and a statement showing items which have been charged but not yet paid. Furthermore, if a fixed time for payment is established by the invoice, the invoice could satisfy the fair debt collection act requirement for itemization of amounts due, and the subdivision HOA requirement under TPC §209.008 if the invoice includes a statement that "attorney's fees and costs will be charged to the owner if the delinquency continues after ..." the fixed due date (a "date certain"). I have attached a form condominium HOA invoice and a separate form subdivision HOA invoice as a sample.

C. Late Charges.

1. Generally. I recommend the HOA consider assessing a late charge to provide a financial incentive for owners to pay on time. If the late charge is not provided in the Governing Documents, then the Board could adopt a resolution adopting the procedure or system of rules governing late charges. I recommend a fixed late charge that is realistically tied to the cost of administratively handling a late payment, rather than to the amount owed. I recommend the book keeper or accountant for the HOA perform an analysis and provide the HOA with a letter estimating the cost to the HOA of handling a late payment. The cost of handling the late payment is virtually the same, whether the entire payment is not made, or a partial payment is made. Therefore, it makes sense for the late charge to be the same fixed amount whether it results from the delinquent owner paying none, or part, of the amount due.

2. HOA Late Charges Not Subject to Usury. A Texas court has held that HOA late charges are not subject to usury limitations. In *Tygrett v. University Gardens Homeowners' Association*, 687 S.W.2d 481 (Tex. App.—Dallas 1985, writ ref'd n.r.e.), a unit owner alleged that the late fees charged by the condominium HOA were actually usurious interest prohibited by law. The court of appeals held that the condominium HOA was not a lender, and there was no use or detention of funds loaned by the HOA, nor a forbearance agreement on the part of the HOA. Tygrett, 687 S.W.2d at 483. The court held the HOA was more properly characterized as an agent of the owners and a conduit for the owners' funds to maintain the condominium, making the usury laws inapplicable here. Tygrett, 687 S.W.2d at 483.

In a 2001 unreported case from the Dallas Court of Appeals, *Forest Point Venture v. Forest Point Owners Assoc., Inc.*, 2001 WL 1160995, (Tex.Civ.App.–Dallas, 2001, no writ) followed the Tygrett decision in a case involving a condominium HOA collecting a $5 per day late charge for late payment of assessments.

Also following the Tygrett decision relating to late charges, is *Garcia v. Texas Cable Partners, L.P.*, 114 S.W.3d 561, 566 (Tex.Civ.App.–Corpus Christi-Edinburg 2003, no writ). The court found a $5 per day late fee charged for a cable subscription was not interest under the Tygret reasoning. Further, the court noted, in support of its decision, that the late fee had no relationship to the amount the customer owed.

In appears logical to me that the reasoning of these decisions would apply equally to subdivision HOAs and to condominium HOAs, since their administrative role is the same.

3. Statutory Authority for Late Charges. For condominium HOAs, TPC 82.102(a)(12) provides that, unless otherwise provided by the declaration, the association, acting through its board, may impose late charges for late payments of assessments. The statute applies both to TUCA condominiums and to pre-TUCA condominiums which have not adopted TUCA. See TPC 82.002(c).

D. Delinquent Interest.

1. General Comments. It is my view that charging delinquent interest is counterproductive for HOAs. As a practical matter, the amounts are generally charged in small units, and the time taken to calculate and keep up with the proper application of accruing and unpaid interest costs the HOA more than it yields. However, it is the HOA's decision. Furthermore, many declarations establish a rate of interest which the HOA may consider itself duty bound to apply in compliance with the declaration.

2. Statutory Authority for Delinquent Interest Charges. TPC 82.102(a)(12) provides that, unless otherwise provided by the declaration, the association, acting through its board, may impose interest for late payments of assessments. The statute applies both to TUCA condominiums and to pre-TUCA condominiums which have not adopted TUCA. See TPC 82.002(c).

E. Returned Check Charges.

1. General Comment. It is logical to me that charging a fee for returned checks should be permitted under the same legal reasoning as applies to late charges; however, I do not have case law authority supporting this principle.

2. Statutory Authority for Returned Check Charges. TPC 82.102(a)(12) provides that, unless otherwise provided by the declaration, the association, acting through its board, may impose returned check charges. The statute applies both to TUCA condominiums and to pre-TUCA condominiums which have not adopted TUCA. See TPC 82.002(c).

F. When Is Notice Effective?

The Governing Documents should be reviewed to determine whether the effective date of the notice is stated to be the date of mailing, the date of receipt, or some other date. If the Governing Documents specify an effective date for notices, I recommend using that date for all notices other than the notices provided for under TPC Chapter 51 relating to foreclosures of real property liens. If the Governing Documents do not provide for an effective date for the non-chapter 51 notices, the notice itself should make the effective date clear. In this situation, I prefer to use the date of mailing as the effective date, because it is provable by the attorney's staff, and because it follows the same principle in the foreclosure notice provisions of the TPC.

V. STEP 2. HOA DEMAND FOR PAYMENT OF DELINQUENT ASSESSMENTS

A. General.

After an owner becomes delinquent on the payment of an assessment, the HOA should send out a demand for payment. Step 2 in the process involves the HOA demanding payment of a delinquent amount previously invoiced. See the attached separate forms for a condominium HOA and a subdivision HOA.

B. Itemization Required by Consumer Laws.

Both forms seek to satisfy the itemization requirement of the consumer laws (see discussion of Consumer Debt Collection Laws: Comments on Validation Notice)**.**

C. Special Obligations on Subdivision HOAs.

The subdivision HOA should include a payment plan option to satisfy the requirement imposed by TPC §209.0062, a 30-day notice and right to cure as required by TPC §209.0064, and the separate written notice and right to cure with attorney fees warning of TPC §209.008. TPC §209.0064 also requires the notice to be send certified mail, return receipt requested, by the subdivision HOA.

<u>1. 30 Day Notice & Right to Cure Required</u>. Under TPC §209.0064, a subdivision HOA may not hold an owner liable for fees of an attorney (a "collection agent") retained by the HOA, unless the HOA first provides written notice to the owner by certified mail, return receipt requested, that: (1) specifies each delinquent amount and the total amount of the payment required to make the account current; (2) describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a payment plan through the association; and (3) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken. This notice should be provided by the subdivision HOA before the attorney is engaged. If the HOA does not have the forms necessary to accomplish this step, then the first order of business for the attorney should be to provide this form for future use.

<u>2. Separate Notice & Right to Cure Requirement</u>. TPC §209.008 provides that a HOA may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the HOA relating to collecting amounts, including damages, due the HOA for enforcing restrictions or the bylaws or rules of the HOA only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain. This notice should be provided by the subdivision HOA before the attorney is engaged. If the HOA does not have the forms necessary to accomplish this step, then the first order of business for the attorney should be to provide this form for future use.

<u>3. Payment Plan</u>. TPC §209.0062 requires subdivision HOAs with more than 14 lots to adopt reasonable guidelines to establish an "alternative payment schedule" for repayment of delinquent assessments and other amounts without incurring additional monetary penalties. However, a reasonable charge for administering a payment plan is permitted. The minimum term for a payment plan offered by a subdivision HOA is three months, and the plan may not extend more than 18 months from the date of the owner's request for a payment plan. The payment plan offered to the delinquent owner should be consistent with the alternative payment schedule guidelines adopted by the subdivision HOA.

VI. STEP 3. ENGAGING THE ATTORNEY & REQUEST FOR INFORMATION

A. General.

When the HOA decides to engage an attorney to assist with enforcing the available assessment collection remedies, I prefer to include in the foreclosure related issues and information in the terms of engagement. A form Attorney Engagement Agreement is attached.

B. Engagement Rider.

A form engagement rider ("<u>Rider</u>") is attached to the engagement letter agreement. The Rider covers a range of issues, including the disclosures and administrative issues relating to representing an entity, the scope of work, the various actions to be taken and the time-frames involved, a base fee with extra charges for contingencies, involving the costs of the various actions to be taken in a demand process, and the information needed by the attorney from the HOA.

C. Financial Information Form.

A form for financial information needed for the default notice is attached, which can be used for both the condominium HOA and the subdivision HOA. The financial information requested is the information needed to comply with the itemization required by the applicable consumer laws (see discussion of Consumer Debt Collection Laws: Comments on Validation Notice), and for compliance with the itemization required of a subdivision HOA by TPC §209.0064.

D. Board Resolution Authorizing Engagement.

A form HOA Attorney Engagement Board Resolution is provided approving the attorney engagement agreement. For a subdivision HOA, the resolution should recite that it complies with the open board meeting requirements of TPC §209.0051, which requires enforcement action (such as a foreclosure) to be authorized only at open board meetings requiring the following: "Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be: (1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or (2) provided at least 72 hours before the start of the meeting by: (A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members: (i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or (ii) on any Internet website maintained by the association or other Internet media; and (B) sending the notice by e-mail to each owner who has registered an e-mail address with the association. In addition, the board is required to keep written minutes of the meeting.

Notwithstanding the subdivision HOA requirement, I prefer to have a board resolution to confirm that the board is aware of the engagement and in support of it. For this reason, I generally require a small retainer to make sure the treasurer is aware of the engagement, and has no objections to paying the fees. Hence, I recommend obtaining a resolution from subdivision HOAs and condominium HOAs at the beginning of the representation.

Of course, in the case of ongoing representation, I would ordinarily not get separate resolutions. However, for subdivision HOAs, the open meeting requirement appears to apply to each assessment enforcement action, and requesting a copy of the meeting minutes might inform the board of the minutes requirement under TPC §209.0051.

E. Lawyers Creed.

A form Lawyers Creed is attached as a matter of convenience, although another copy of the creed is included in the seminar addenda materials. I attach the creed to all of my engagement letter agreements.

VII. STEP 4. PRELIMINARY REVIEW OF INFORMATION TO DETERMINE HOW TO PROCEED

A. General.

When dealing with an HOA for the first time, I review the governing documents provided to me by the HOA and by a title company that has recently insured a transaction on one of the properties. I then go through a checklist of items which is covered in more detail by Robert Burton's article entitled HOA Pre-Foreclosure Due Diligence, as a part of this seminar. The obligation to record the Governing Documents to give effect to them pursuant to TPC §202.006, is clearly fundamental to enforcing the owner obligations.

B. Governing Documents.

In the case of a condominium HOA, TPC §82.113 provides the necessary legal framework for a nonjudicial foreclosure. TPC §82.113 applies both to TUCA condominium HOAs and to pre-TUCA condominium HOAs pursuant to TPC §82.002(c). The issue then, is whether the Governing Documents actively deprive the condominium HOA from imposing a lien, or from non-judicially foreclosing a lien.

In the case of a subdivision HOA, the attorney must find the legal basis for the lien and the right to non-judicially foreclose it; otherwise, the application for expedited foreclosure cannot support an order approving the non-judicial foreclosure. A separate article is being presented on this topic and I will defer to that article for further information.

I also review the documents to determine what notice obligations exist relating to lienholders. I request whether any lienholder has requested notice of foreclosure [TPC §82.113(h) - requires the HOA to notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the HOA a written request for notification of the unit owner's monetary default or the HOA's intent to foreclose its lien. Determine whether the Governing Documents require lienholders to be notified.

I also recommend verifying what the Governing Documents say about where notices from the Association are to be sent. Both the requirements of the foreclosure statutes, and the requirements of the Governing Documents, will need to be satisfied.

C. Title Information.

Obtaining an abstractor's certificate from a title company is important in my practice in order for me to obtain reliable information relating to the status of title, including the existence of subordinate or superior lienholders, any federal tax liens, documents that may have information relevant to the foreclosure (such as changes of ownership or addresses), and the taxing agencies. A form request for abstractor's certificate is attached.

D. Military Service Status.

TPC Chapter 51 makes special requirements for foreclosures during, and 9 months after, active military service. An assessment obligation originating before the servicemember's active duty military service commences, and for which the servicemember is still obligated (called a "Military Servicemember Obligation"), is subject to military servicemember restrictions. TPC §51.015(b).

Under TPC §51.015(c), to enforce a Military Servicemember Obligation by foreclosure, during the period of active duty or 9 months afterward, on a dwelling owned by a military servicemember, the lienholder must obtain either a court order or a waiver from the Military Servicemember. Any waiver must comply with TPC §51.015(e). Violation of this restriction constitutes a Class A misdemeanor. TPC §51.015(f).

Under TPC §51.015, "active duty military service" and "active duty military servicemember" mean, service either as a member of the armed forces of the United States, or, with respect to a member of the Texas National Guard or the National Guard of another state or a member of a reserve component of the armed forces of the United States, active duty under an order of the president of the United States. This statute applies to assessment obligations. TPC §51.015(b).

Under limited circumstances, on the application to a court by a dependent of a military servicemember, such dependent may also be entitled to protection; however, no requirement exists for an affirmative determination by a foreclosing party, whether the obligor is a military servicemember's dependent. TPC §51.015(g)

The 20-day notice-of-default-and-right-to-cure, the mailed 21-day notice-of-foreclosure, and the posted 21-day notice-of-foreclosure, must each contain a statement that is conspicuous, printed in boldface or underlined type, and substantially similar to the following: ***"Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."*** TPC §51.002(d).

The seminar article "HOA Pre-Foreclosure Due Diligence" provides a detailed discussion of the "active duty military service" issues.

E. Federal Tax Lien.

Until an IRS lien is filed of record in the real property records, bona fide third parties may acquire an interest in the taxpayer's property free of the tax lien. 26 U.S.C. § 6323(a); see also Sgro v. United States, 609 F.2d 1259 (7th Cir. 1979). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §4.3:3.

If the property is encumbered by an inferior federal tax lien filed more than thirty days before the scheduled foreclosure sale, the HOA must give a special notice to the IRS at least twenty-five days in advance of the sale. See 26 U.S.C. § 7425(b), (c).

Notice of a foreclosure sale to the IRS must be given in accordance with its regulations in writing and by registered or certified mail, or by personal service, not less than twenty-five days prior to the sale. 26 U.S.C. § 7425(b)(1), (c)(1). The sender of an IRS foreclosure notice must ensure that the U.S. Postal Service postmarks the envelope at least twenty-five days before the foreclosure sale. 26 C.F.R. § 301.7502–1. Postmarked dates made by an in-house mailing machine are not acceptable. The date of sale is not included in the twenty-five-day calculation. 26 C.F.R. § 301.7425–2. See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §4.3:10.

It is critical that proper notice be sent to the IRS before any foreclosure sale. An inferior IRS lien will survive a foreclosure sale and continue to encumber the foreclosed property if the mortgagee failed to provide the IRS with the required notice and information at least twenty-five days before the foreclosure sale. 26 C.F.R. §§ 301.7425–2(b), 301.7425–3(d); 26 U.S.C.A. § 7425(c)(1). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §4.3:10.

The name of the taxpayer affected by a tax lien must be disclosed with reasonable preciseness on the tax lien notice, but the misspelling of a taxpayer’s name through the transposition of two letters has been held immaterial. See Richter’s Loan Co. v. United States, 235 F.2d 753 (5th Cir. 1956). However, the wrong middle initial for an individual (see Continental Investments v. United States, 142 F. Supp. 542 (W.D. Tenn. 1953), and the omission of the first initial of a corporation (see United States v. Ruby Luggage Corp., 142 F. Supp. 701 (S.D.N.Y. 1954), have been held material. Filing a tax lien against a taxpayer under a name used before marriage is not effective against a lienholder with a conventional lien who has a claim against the taxpayer under the taxpayer’s married name. See United States v. Clark, 81-1 U.S.T.C. P 9406 (S.D. Fla. 1981). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §4.3:2.

The procedures for preparing the notice to the IRS are found in IRS Publication 786, “Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale,” and IRS Publication 4235, “Collection Advisory Group Numbers and Addresses.” According to Publication 786, the application or notice should be addressed to the “Collection Advisory Group Manager” for the area in which the notice of federal tax lien was filed. Publication 786 then instructs the reader to use Publication 4235, which lists the addresses for the Collection Advisory offices, to determine where to mail the notice. For more information, see 26 C.F.R. § 301.7425–3(a)(1) and Internal Revenue Bulletin 2007-36 (T.D. 9344). See also the IRS’s Web site (www.irs.gov) to obtain copies of all the IRS publications. See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §4.3:10.

A preforeclosure notice to the IRS does not extinguish the IRS lien; rather, the IRS has the right to redeem the property for the foreclosure sale price for a period of 120 days after the date of the foreclosure sale. See 26 U.S.C. § 7425(d)(1) and Treasury Regulations 26 C.F.R § 301.7425–4. If the IRS does not redeem, the purchaser at the foreclosure sale takes the property free of the IRS lien. See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §4.3:12.

IRS Publication 4235 (rev. 5-2014) references forms & lists contacts

IRS Publication 786 (rev. 4-2011) instructions for notice: IRS Pub 786 includes instructions for the notice to the IRS.

The seminar article entitled “HOA Pre-Foreclosure Due Diligence” provides in-depth information concerning the notice of federal tax liens.

VIII. STEP 5. DECISION TO PROCEED WITH FORECLOSURE

A. Appointment of Trustee

With respect to condominium HOAs, TPC § 82.113(d) provides as follows: “By acquiring a unit, a unit owner grants to the association a power of sale in connection with the association's lien. By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the association to exercise the power of sale on behalf of the association. Except as provided by the declaration, an association shall exercise its power of sale pursuant to Section 51.002.”

The Association should pass a resolution appointing a trustee for the foreclosure, and sign an appointment of trustee. The appointment instrument should be recorded.

It is customary in my practice for the attorney to serve as the foreclosing trustee in a nonjudicial foreclosure; therefore, I prefer to have the appointment approved before I send the initial notice of default and right to cure letter.

TPC §82.113(d) provides that, by written resolution, the HOA board may appoint, from time to time, an officer, agent, trustee, or attorney of the HOA to exercise the power of sale on behalf of the HOA.

The condominium statutes provide a useful model for the nonjudicial trustee’s sale process.

B. Consumer Debt Collection Laws.

1. The Fair Debt Statutes. The Fair Debt Collection Practices Act (FDCPA), codified at 15 U.S.C. §§ 1692–1692p, is the primary federal statute regulating collection of consumer debts. Some, but not all, of the FDCPA is mirrored in the Texas Debt Collection Act (TDCA), codified at Tex. Fin. Code ch. 392. Both Acts apply only to the collection of “personal, family, or household” debts, which would include all residential lien obligations. See 15 U.S.C. § 1692a(5); Tex. Fin. Code § 392.001(2). The FDCPA is the focus of this discussion because it is the statute that adds specific disclosure requirements, only one of which is mirrored in the TDCA. See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.1.

2. Applicability to Attorneys.

(a) The FDCPA defines a “debt collector” as any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. . . For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. 15 U.S.C. § 1692a(6).

Under this definition attorneys who regularly collect consumer debts are subject to the FDCPA. This applies even to attorneys whose activities are limited solely to collection litigation. Heintz v. Jenkins, 514 U.S. 291, 294 (1995).

(b) The TDCA defines "debt collector" so broadly that both attorneys and creditors are included within the definition. See Tex. Fin. Code § 392.001(6). The TDCA also contains a separate category of "third-party debt collector" definition:

> "Third-party debt collector" means a debt collector, as defined by 15 U.S.C. Section 1692a(6), but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has non-attorney employees who: (A) are regularly engaged to solicit debts for collection; or (B) regularly make contact with debtors for the purpose of collection or adjustment of debts. Tex. Fin. Code § 392.001(7).

The TDCA imposes special requirements on third-party debt collectors. See Tex. Fin. Code §§ 392.101, 392.202, 392.304(a)(5). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.1:1.

(c) There can be no doubt that attorneys who send "breach" or "cure" letters are subject to the FDCPA as those letters always demand money from the consumer to pay off or cure delinquency on the secured debt. See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.1:2.

<u>3. Bond Requirement</u>. Under the Texas Fair Debt Collection Practices Act §392.101, a debt collector must obtain a surety bond for $10,000. While I am sure there are many sources for such bonds, my bond is with SuretyBonds.com. The "Type of Bond" on my application stated "Collection Agency".

I do not consider my real estate law practice to be a debt collection business, I cannot deny that I do collect debts as part of my practice. It is also clear to me that sending demand letters for the collection of delinquent amounts falls within the definition of a debt collector under the statutes.

<u>4. Basic Requirements</u>. The FDCPA contains two primary notice requirements, one of which is mirrored in the TDCA and one of which is not. Section 1692g(a) requires what is commonly known as a validation notice. See 15 U.S.C. § 1692g(a). This provision has no state law counterpart. Section 1692e(11) mandates what is known in the collection industry as the "mini-Miranda" notice. See 15 U.S.C. § 1692e(11). This provision is mirrored in the TDCA at Tex. Fin. Code § 392.304(a)(5). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2.

<u>5. Validation Notice</u>. Within five days of a debt collector's initial communication with a consumer in connection with the collection of a debt the collector must send the consumer a notice containing:

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. 15 U.S.C. § 1692g(a). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:2.

<u>6. Comments on Validation Notice</u>.

(1) Total Amount Due: The "amount of the debt" is the total amount due at the time the notice is sent. A notice that does not state that full amount is deficient, even if the sender was unable to obtain that amount. See Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C., 214 F.3d 872, 875 (7th Cir. 2000). If the balance includes sums other than principal and interest (such as attorney's fees or other irregular charges) those charges should be specifically identified in the notice. If the debt is subject to accruing interest or other charges some courts have indicated that the notice should contain the following additional disclaimer: "Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay

the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call 1-800-[phone number].” Miller, 214 F.3d at 876; Dragon v. I.C. System, Inc., 483 F. Supp. 2d 198 (D. Conn. 2007). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:2.

(2) Identification of Creditor: Under the FDCPA, a “creditor” is— “any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.” 15 U.S.C. § 1692a(4). In preparing the validation notice care should be taken to ensure that the creditor is correctly identified. See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:2.

(3) The first of the thirty-day notices refers to the assumption, by the debt collector, that the debt is valid. The debt is not assumed to be valid by others, and the letter should not imply it. The statute requires reference to assumption by the debt collector, not the creditor, a court, or any other entity. The first thirty-day notice also does not refer to a requirement that the debtor dispute the debt in writing, and in drafting an FDCPA compliant letter, no reference should be made to such a requirement. See 15 U.S.C. § 1692g(a)(3). The imposition of a writing requirement to avoid the collector’s assumption of validity violates the FDCPA. See Camacho v. Bridgeport Financial, Inc., 430 F.3d 1078, 1081 (9th Cir. 2005). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:2.

(4) & (5) In contrast to the first of the thirty-day notices, the second and third thirty-day notices must refer to a writing requirement because it is necessary for a consumer to dispute the debt in writing in order to properly invoke his rights under this section. See 15 U.S.C. § 1692g(a)(4), (5). The first and second thirty-day notices must also refer to disputing all or part of the debt. Simply referring to disputing the debt is insufficient. See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:2.

<u>7. Contradictions Prohibited</u>. Overshadowing Prohibited: Multiple courts have held that the validation notice must not contain statements that are overshadowed or contradicted by other notices following the validation notice during the thirty-day period. Russell v. Equifax A.R.S., 74 F.3d 30, 34–35 (2d Cir. 1996); Miller v. Payco-General American Credits, Inc., 943 F.2d 482, 484 (4th Cir. 1991); Graziano, 950 F.2d at 111; Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222, 1225 (9th Cir. 1988). When crafting a notice letter related to acceleration or foreclosure, an attorney must recognize that a notice provision such as the twenty-day period referenced in Texas Property Code section 51.002 is merely the minimum and not a maximum. If a validation notice is combined with a section 51.002 foreclosure notice, the letter should be crafted so that the deadline for section 51.002 purposes does not overshadow or contradict the thirty-day validation notice. See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:2.

<u>8. Requests for Validation</u>. If a consumer notifies the debt collector in writing within the thirty-day validation period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector may not continue attempting to collect the debt, or any disputed portion thereof, until the debt collector “obtains verification of the debt or a copy of the judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.” 15 U.S.C. § 1692g(b). Upon the consumer’s written request within the thirty-day period, the debt collector must provide the consumer with the name of the original creditor, if different from the current creditor. 15 U.S.C. § 1692g(a), (b). The Act does not specify what quantity or type of information is required to validate a debt. However, a response to a general dispute may be sufficient if it includes an account history or copies of relevant statements and a representation that the collector has checked with the creditor and verified that the consumer owes the amount asserted. See, e.g., Clark v. Capital Credit & Collection Services, Inc., 460 F.3d 1162, 1173–74 (9th Cir. 2006); Chaudhry v. Gallerizzo, 174 F.3d 394, 406 (4th Cir. 1999); Anderson v. Frederick J. Hanna & Associates, 361 F. Supp. 2d 1379, 1383 (ND Ga. 2005). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:3.

<u>9. “Mini-Miranda” Notice</u>. A debt collector must disclose in the initial oral or written communication with the consumer what is commonly known as the “mini-Miranda” warning, which is that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. 15 U.S.C. § 1692e(11). In all subsequent communications with the consumer the debt collector must disclose that

the communication is from a debt collector. 15 U.S.C. § 1692e(11). The TDCA imposes an identical requirement upon third-party debt collectors. See Tex. Fin. Code § 392.304(a)(5). See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:4.

10. Basic Validation and Mini-Miranda Notices. The following paragraph covers the basic validation notice and mini-Miranda requirements [See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:5.]:

> The names of your creditor and amount of the debt are set forth above. Unless, within thirty days after your receipt of this notice, you dispute the validity of the debt or any portion thereof, we will assume the debt to be valid. If, within that thirty-day period, you notify us in writing that the debt or any portion thereof is disputed, we will obtain verification of the debt or a copy of a judgment, if any, and we will mail to you a copy of such verification or judgment. If the original creditor is different from the creditor named above, then upon your written request within that same thirty-day period we will provide you with the name and address of the original creditor. THIS FIRM IS A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

11. Added "Safe Harbor" Provisions. The following "safe harbor" disclaimers have been approved by various courts to address the situations noted [See Texas Foreclosure Manual, Third Edition, William H. Locke, Jr. et al, 2014, §7.2:5.]:

(a) If a suit may be filed during the validation period: "The law does not require me to wait until the end of the thirty-day period before suing you to collect this debt. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins with your receipt of this letter, the law requires me to suspend my efforts (through litigation or otherwise) to collect the debt until I mail the requested information to you." Bartlett v. Heibl, 128 F.3d 497, 502 (7th Cir. 1997).

(b) Whether interest will continue to accrue on a debt: "As of the date of this letter, you owe $ ___ [the exact amount due]. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write the undersigned or call 1-800-[phone number]." Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C., 214 F.3d 872, 876 (7th Cir. 2000).

A form affidavit verifying debt is attached as: Condominium Form 5-3: HOA Affidavit Verifying Debt.

IX. STEP 6. DEMAND FOR PAYMENT & NOTICE OF INTENT TO FORECLOSE

A. General.

After the attorney has ensured that, to the extent reasonable, the HOA has covered the bases by verifying ensure that the HOA documents are probably enforceable, their charges are valid and supported by the administrative protocol for the HOA, and the necessary prerequisites have been accomplished to entitle the HOA to recover their attorney fees, I proceed to the next step.

B. Notice of Intent.

This next step, or STEP 6, involves preparing what is referred to generally as the "Notice of Intent" derived from the phrase "Notice of Intent to Foreclose".

Generally, the Notice-of-Intent must satisfy the requirements of TPC §51.002 relating to the time frames, the addresses, the manner of mailing, and so forth.

This Notice-of-Intent letter has multiple roles. With respect to the delinquent owner, the Notice of Intent: (a) demands payment by a stated deadline; (b) declares a continuing default; (c) notifies the delinquent owner of their right to cure the default up to the time the foreclosure is complete; and (d) notifies the delinquent owner of the HOA's intention to commence foreclosure proceedings if the delinquency is not cured by the deadline established by the demand for payment.

The Notice-of-Intent also covers the bases required for recovering attorney fees by itemizing the charges, informing the delinquent owner of the owner's options and obligations, and providing the delinquent owner with the required time for repayment in order to meet the foreclosure requirements, but also to ensure that attorney fees can be recovered by the HOA from the delinquent owner.

In addition, the notice provides the military service disclosure required by TPC §51.015.

C. Deadlines for Payment to Avoid Foreclosure Proceedings.

Notices-of-Intent generally will provide a 20-day notice requirement as required by TPC §51.002 for a property which is used as the debtor's residence; however, because of the requirements under TPC §209.0064, I think it is prudent to provide a 30-day deadline in the Notice-of-Intent for a subdivision HOA. This avoids any argument that the subdivision HOA failed to properly satisfy TPC §209.0064, and ensures that the subdivision HOA has the right to recover its attorney fees from the delinquent owner.

D. Consumer Requirements.

The Notice of Intent form provided in this article addresses the basic validation notice, the mini-Miranda requirements, and the "safe harbor" provisions suggested in the Consumer Debt Collection Laws discussion of this article.

X. STEP 7. NOTICE OF FORECLOSURE

A. General.

The main function of the Notice-of-Foreclosure letter is to enclose the Notice of Trustee's Sale. Beyond that, the Notice-of-Foreclosure letter is intended to ensure compliance with TPC §51.002 regarding the 21-day notice to the debtors in the manner required.

However, despite the foregoing, I am adhering to custom, and use the Notice-of-Foreclosure letter to cover the bases and avoid tripping up on any prior bases covered. A lot of repetition of disclaimers and disclosures is accomplished. Generally, I simply refer to the prior Notice-of-Intent letter which included the amounts owed and more detail concerning the option and obligations.

As a practical matter, everything that is in the Notice-of-Foreclosure letter could probably be added to the Notice of Trustee's Sale.

B. Other Coverage.

The Notice-of-Foreclosure also provides the military service disclosure required by TPC §51.015, and repeats the instructions on how the owner should handle curing the default to avoid the foreclosure. A separate form Notice of Foreclosure is attached for the subdivision HOA and the condominium HOA.

XI. CONCLUSION

In conclusion, this article includes the following forms:

<u>Engagement Forms for Condo & Subdivision HOAs</u>:

1. Engagement Letter
2. Engagement Rider
3. Lawyers Creed
4. HOA Resolution
5. Financial Information
6. Request for Title Certificate

<u>Condominium HOA - Demand Letters for Condo HOAs</u>:

7. Invoice
8. HOA Notice of Default
9. Attorney Notice of Intent
10. Attorney Notice of Foreclosure

<u>Subdivision HOA - Demand Letters for Subdivision HOAs</u>:

11. Invoice
12. HOA Notice of Default
13. Payment Plan Agreement
14. Attorney Notice of Intent
15. Attorney Notice of Foreclosure

The body of the article seeks to provide the legal landscape that causes the forms to be useful or necessary.

I hope it has helped.

XII. FORMS

A. Engagement Letter.

[This form is an attorney engagement letter which covers the essential issues of identifying the client, describing the transaction, agreeing on the scope of work, providing for a retainer, and attaching related documents, for general representation of an HOA (either a Condominium HOA or a Subdivision HOA), including, but not limited to, enforcement with foreclosure proceedings, if necessary, the collection of delinquent assessments.]

[ATTORNEY LETTERHEAD]

ENGAGEMENT LETTER AGREEMENT

DATE

Attn: [OFFICER]
[NAME OF ASSOCIATION]
[ADDRESS]

RE: Representation of [ASSOCIATION NAME] ("Client" or "Association") concerning general counsel for all matters relating to the Association, including but not limited to, enforcement with foreclosure proceedings, if necessary and if authorized by the governing documents or by law, the collection of delinquent assessments (the "Transaction")

Dear _____________:

It was a pleasure visiting with you [e.g. by phone, in my office, earlier today]. We discussed the need for the Association to collect unpaid assessments, to review current laws and the Association's existing documents, and consider action needed to ensure compliance with applicable law, collect the delinquent assessments, and, if necessary, enforcement with foreclosure proceedings, if necessary and if authorized by the governing documents or by law, the collection of delinquent assessments.

This letter states the terms of representation to perform legal services. The scope of my work ("Scope of Work") is limited to providing legal services for the referenced Transaction.

The Supreme Court of Texas requires all attorneys in Texas to follow the attached Texas Lawyer's Creed. The terms of representation include the attached Attorney Agreement Rider, incorporated by reference.

I request a retainer ("Retainer") of $______ to be paid within three business days of your acceptance of the terms of engagement. You may accept this engagement letter agreement by doing the following:

1. The attached Certificate of Corporate Officer Concerning Resolutions for Engagement of Legal Services ("Resolutions") should be completed and signed;
2. This Engagement Letter Agreement should be signed as provided in the Resolutions; and
3. The signed Resolutions and Engagement Letter Agreement should be delivered to me (with the Retainer being paid within 3 business days afterward).

I request that, immediately following acceptance of the terms of engagement, you provide me with a copy of the governing documents, including but not limited to the following (sometimes called "dedicatory instruments"), with all amendments: (1) any declaration and any other restrictive covenants; (2) rules and regulations; (3) bylaws, certificate of formation, or similar instruments governing the administration or operation of the Association; (4) any other documents which govern the Association or the property within the jurisdiction of the Association; (5) the Association's Management Certificate; (6) the most recent Resale Certificate on file with the Association; and (7) for any delinquent assessments for which you seek legal assistance, the financial information requested by the attached Financial Questionnaire for each delinquent property.

Please call me should you have any questions, concerns, or comments.

[ATTORNEY SALUTATION]

Acceptance of Engagement Agreement

By the below signature on behalf of the Association, the Association agrees to the terms of representation and promises to pay the fees.

[NAME OF ASSOCIATION]
By:____
Name:_____________________________________
Title:_______________________________________
Date Signed: ________________________________

Enclosures: Texas Lawyer's Creed
Attorney Agreement Rider
Resolution Certificate
Financial Questionnaire

B. Engagement Rider

[This is a form attachment to the Engagement Agreement which adds the various disclosures and information needed to cover the bases, while leaving the engagement letter itself to cover only the key issues of client identification, description of transaction, scope of work, and retainage, while keeping the message short enough to stay friendly]

[ATTACHMENT TO ATTORNEY ENGAGEMENT LETTER AGREEMENT]
[FOR CONDOMINIUM HOA OR SUBDIVISION HOA]

ATTORNEY AGREEMENT RIDER

My representation is subject to the Texas Disciplinary Rules of Professional Conduct ("Rules"). The terms are:

1. Scope of Work. The legal services to be provided ("Work") constitute the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion or similar professional skill. My representation is limited to the Scope of Work and only the Association may rely on it.

2. Co-Counsel. If I believe specialized expertise is needed to perform a portion of the Work which is outside of my own expertise, I may retain co-counsel for those matters with the Association's consent. Any attorney retained will be subject to the same terms as this Agreement, unless agreed otherwise.

3. Tax Advice. The Scope of Work does not include tax advice.

4. Matters Beyond the Scope of Work. Any matters outside the Scope of Work should be addressed by the Association's other representatives.

5. Fees and Billing.

A. Fees. Customary fees for legal services are based primarily on hourly rates at the time the services are rendered, fixed product charges, and fixed customary document preparation charges, in addition to any out-of-pocket expenses. My current hourly rate is $_______ [for example, $220]. My initial administrative charge for 1/2 hour includes setting up an office file under an engagement agreement. My time is billed in 1/4 hour units.

B. Billing. Invoices are due when received and become delinquent 30 calendar days from the date of the invoice. Invoices accrue 12% per annum simple interest from the due date if not paid. The Association agrees to give written notice of any specific objection to an invoice within 10 days of the invoice date, or it is waived. This Agreement is governed by Texas laws with venue in Nueces County.

C. Fee Estimates. Any estimates constitute "best guesses" and, unless specifically stated as a maximum, are not fixed or maximum fees.

D. Retainer. If no Retainer is requested at this time, a retainer will be paid within 10 days of any later request. If a Retainer has been requested, I have the prerogative of not starting Work until it is paid. Furthermore, I have the prerogative of requesting further retainers as work proceeds, and of discontinuing work until the requested retainer is received in cash equivalent in my law firm trust account. The Retainer will be maintained during my representation, and my invoices are to be separately paid by you. If an invoice is not paid within the 10-day period required by this Agreement, I will pay the invoice from the Retainer, request reimbursement of the Retainer, and stop work until the Retainer reimbursement is received. Failure to follow this procedure does not waive my right to reinstate it later.

E. **IOLTA Disclosure. All funds deposited in my trust account, including the Association's funds, draw interest. That interest is paid by the depository to the Texas Equal Access to Justice Foundation under**

orders of the Texas Supreme Court. I receive none of the interest so earned and I receive no benefit from the Foundation except those benefits that all Texas citizens receive as a result of the services rendered for the Foundation.

6. Disqualification. Based on the information you have provided to me, I have conducted an internal review to determine whether an actual or potential conflict of interest exists. It is my current determination that no actual or potential conflict of interest now exists, except for those potential conflicts of interest, if any, which have been addressed in this letter. If I later discover any conflict of interest, I will seek promptly to disclose it to the Association, at which time the Association may immediately terminate this Agreement. If the Association becomes aware of anything not covered by this letter which may impair my representation, the Association is requested to immediately notify me so it can be addressed promptly.

7. Termination. Either party may terminate this representation at any time, with reasonable prior notice. In that event, it is agreed I will be paid to the effective time of termination and for any time required thereafter either to respond to specific requests made by the Association or in order to facilitate a transition of legal representation. My file documents, except for original documents, are owned by me; however, the Association is entitled to copies of the documents and correspondence contained in them, upon payment of a reasonable copy charge.

8. Attorney as Defendant in Association's Litigation. The Association agrees to pay the defense expenses incurred by me in the event of I am joined as a Defendant in the Association's litigation.

9. Trial Co-Counsel. In the event the Association becomes involved in litigation, I may recommend the Association engage co-counsel with special trial expertise to assist me or to handle primary representation with respect to the litigation.

10. Association Cooperation. The Association is expected to cooperate with me by responding to my phone calls within 24-hours, by not taking action on matters within the scope of my work without first advising me by phone and receiving my response, and by following through with any agreements made through me on the Association's behalf. Furthermore, I will seek to represent the Association's interest, although such representation does not include any action which would impair my integrity or my professional reputation.

11. Organization Representation.

A. Disclosures on Conflicts of Interest. Since the Association may be an organization ("Entity"), these disclosures on conflicts of interest are made:

(1) An attorney has the duty to exercise independent professional judgment on behalf of each Association.

(2) When an attorney is requested to represent multiple Associations in the same matter, he can do so if he concludes that he can fulfill this duty with regard to each of the Associations on an impartial basis, and obtains the consent of each Association after an explanation of the possible risks involved in the multiple representation situation.

(3) In representing an entity, Rule 1.12 provides, in part, as follows:

"A lawyer employed or retained by an organization represents the entity. While the lawyer in the ordinary course of working relationships may report to and accept direction from an entity's duly authorized constituents ... the lawyer shall proceed as reasonably necessary in the best interest of the organization...."

b. Stipulations. Absent a specific understanding, the following stipulations are made:

(1) I am serving as legal counsel to the Entity as the Association, and I represent only the Entity.

(2) Everyone else ("Non-Associations") cannot rely on me to protect their interests in preparing drafts of documents.

(3) If the Non-Associations want legal representation, they will have to get it from another law firm.

(4) I will respond to the instructions of the representative(s) who appear to be authorized and empowered to act on behalf of the Entity. For example, the officers of the Entity are considered to have the authority and power to deal with me. However, I have no duty to verify such authority and no responsibility for discovering whether a representative has committed acts of fraud, defalcation, forgery, or other criminal or civil liability actions.

(5) In the event matters arise which cause any one member to have a claim against another member, I could represent neither member. In the event matters arise which cause any individual related to the Entity (such as an individual officer, director, or shareholder) to have a claim against the Entity, or which cause the Entity to have a claim against an individual, I retain the right to require that the Entity engage other legal counsel for such specific action.

(6) Regardless of the source of funds for the payment of invoices, I represent only the Entity.

(7) There will be no confidences among us regarding the work performed. In other words, if I receive information from or about one of you that I believe the others should have in order to make decisions about the subject of the representation, I will give the others that information.

C. Advisements.

(1) Each participant who is a member of the Entity is advised to employ their own lawyer. There are many issues on which you may or will have conflicting or potentially conflicting interests, such as management. If each had their own lawyer, each could discuss all things in confidence with that lawyer and have his undivided loyalty and attention.

(2) You have advised me that you do not anticipate any material differences of opinion within the Entity.

D. Additional Disclosures & Agreements. Representation of any entity automatically involves potential conflicts since such entities are, as a practical matter, nothing more than the joining together of individuals or other entities with differing needs, for what is initially perceived to be a common objective. It is impossible to enumerate all of the possible effects this may have upon an attorney's representation of the entity, but each individual should understand when there is such adversity of interest, the lawyer for the entity cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the entity and the individual may not be privileged insofar as that individual is concerned.

12. Foreclosure.

A. Nonjudicial Foreclosure Fees. The legal fees for the uncontested foreclosure procedures will be [AMOUNT] ("Foreclosure Base Charge"), and costs and additional time required at the per hour rate of [AMOUNT]. The anticipated costs include recording and filing fees (approximately [AMOUNT] [for example, $50.00), foreclosure abstractor's certificate (generally between [AMOUNT] and [AMOUNT] [for example, $175.00 and $200.00] and certified mail charges (approximately [AMOUNT] [for example $25.00]). If Federal Tax Liens are discovered, an additional charge of [AMOUNT] per lien will be charged for the furnishing of the notice which must be sent to the Internal Revenue Service in connection with each such lien.

[THIS PARAGRAPH APPLIES ONLY TO SUBDIVISION HOAs] The following special circumstances apply to foreclosure proceedings by subdivision home owner associations: (a) subordinate lien holders must be given notice of the foreclosure with a minimum right to cure of 60 days [See TPC §209.0091]; and (b) the Association must obtain a court order in an application for expedited foreclosure before actually posting the Property for foreclosure, which generally adds 60 - 90 days to the foreclosure process [See TPC §209.0092]. An additional charge of [AMOUNT] will be charged for these procedures.

[THIS PARAGRAPH APPLIES ONLY TO SUBDIVISION HOAs] Texas law requires all subdivision home owners' associations to adopt a home owners' association composed of more than 14 lots (i.e. a subdivision of 14 lots or less is exempt from this requirement) must adopt reasonable guidelines to establish an alternative payment schedule (called a "Payment Plan Guidelines") by which an owner may make partial payments (called a "Payment Plan") to the home owners' association for delinquent assessments or any other amount owed to the association without accruing additional monetary penalties. Monetary penalties do not include reasonable costs associated with administering the payment plan or interest. A Payment Plan offered by a home owners' association must be not less than three months, and not more than 18 months from the date of the owner's request for a Payment Plan. The Association is not required to enter into a Payment Plan with an owner who failed to honor the terms of a previous Payment Plan during the two years following the owner's default under the previous Payment Plan. The Association is required to record the Payment Plan Guidelines in the real property records.

[THIS PARAGRAPH APPLIES ONLY TO SUBDIVISION HOAs] Texas law also provides that a home owners' association may not hold an owner liable for fees of a collection agent (which I am presuming includes the Association's attorney) retained by the home owners' association unless the Association first provides written notice (called the "Notice of Itemized Charges") to the owner by certified mail, return receipt requested, that: (1) specifies each delinquent amount and the total amount of the payment required to make the account current; (2) describes the options the owner has to avoid having the account turned over to a collection agent, including information regarding availability of a Payment Plan through the Association; and (3) provides a period of at least 30 days for the owner to cure the delinquency before further collection action is taken. [See TPC §209.0064]. Therefore, if the attorney is engaged and the Association has not previously provided this notice, the Association may not hold an owner liable for the attorney fees incurred by the Association for the fees charged by the attorney before the Notice of Itemized Charges is given to the owner. It is therefore recommended that the Association provide a Notice of Itemized Charges to the owner, and allow the full 30-day cure period to expire without the assessments being brought current, before the attorney is requested to perform any work other than assist the Association to develop a form Notice of Itemized Charges and/or Payment Plan Guidelines.

The anticipated fee is based on the assumption that the foreclosure proceedings are to be an uncontested nonjudicial foreclosure sale, without efforts by the debtor to cure the default, and with voluntary delivery of possession. Additionally, the fees will increase in the event the sale is postponed or involves workout or settlement negotiations, or if I am requested to furnish written legal opinions or memorandums on legal issues. I will rely on the Association for the financial accuracy of the financial data provided.

B. Debtors and Addresses. Under current Texas law, notices must be mailed to "each debtor who, according to the records of the holder of the debt, is obligated to pay the debt." Thus, in addition to the original makers on the Note, any guarantors and parties assuming the debt, must also be notified. The Association should provide a list of all of the debtors within the above category, and their last known address(es) as shown by the records of the Association.

C. Calendar and Questionnaire. The anticipated foreclosure date is [DATE] ("Scheduled Foreclosure Date"), as the first Tuesday in the month of [MONTH]. To meet the requirements for the Scheduled Foreclosure Date, the notices of intent to foreclose will need to be mailed no later than [DATE] (20 days prior to the posting deadline), and the posting deadline is [DATE].

[THIS PARAGRAPH APPLIES ONLY TO SUBDIVISION HOAs] [NUMBER, e.g. 60] days should be added to the calendar for the expedited foreclosure court proceeding necessary to obtain an order allowing the foreclosure sale to be scheduled, in the case of a subdivision home owners association.

Furthermore, a determination of the existence of Federal Tax Liens must be conducted after [DATE], (the IRS must file their liens more than 30 days prior to the foreclosure sale), yet in time to send the IRS notices, if necessary, by [DATE] (25 days prior to the foreclosure date).

D. Related Written Materials. If the Association has any understandings (oral or written) as to workout negotiations, reinstatement considerations, or cure privileges which have been communicated to the Delinquent owner, please provide copies of all related correspondence and Association's file memos in this respect. In the event no writings exist as to these matters, but conversations have been held with the Delinquent owner on these matters, please describe them.

Please provide copies of any and all documents governing the Association and the properties within it, including an owner title policy, ad valorem tax statements on any delinquent property, correspondence, demands for payment, memos, reports, leases, agreements, and any information relating to the value of the delinquent property contained in the Association's files.

E. Reliance on Third-Party Information. A significant part of the foreclosure process involves obtaining information and reliance upon it in conducting the foreclosure sale. I will rely upon third parties for the information, without verifying its accuracy. Examples of such third-party provided information include the following: (I) the names and addresses of all delinquent property owners obligated to pay the delinquent assessments; (ii) the financial data provided to the delinquent owners reflecting the status of the debt; and (iii) title information reflecting ownership, federal tax liens, and other matters.

F. Work-Out Negotiations and Collection Efforts. In order to avoid confusion, please: (1) refer all inquires from the Delinquent owner to me; (2) notify me of any contacts from the Delinquent owner or their counsel or others; (3) notify me immediately upon the receipt of any funds from the Delinquent owner; (4) do not send any payoff quotations, demand letters, delinquency notices or other communications to the delinquent owner without prior Attorney review; (5) coordinate with me the hiring of all professional services, such as appraisers, inspectors, surveyors, engineers and property managers the Association deems appropriate to hire; and (6) be careful in any future documentation concerning work-out proposals to avoid the inclusion in such memos of any statements which could inadvertently affect the reasonable appearance of the Association, as such business records may be discoverable in the event of bankruptcy or other litigation by the delinquent owner.

G. Property Value, Existing Mortgage, and Insurance. I will rely upon the appraisal district value of the Property unless you advise me otherwise. I request that you provide me with whatever information you have in your files relating to any lien holders on the Property. The net value of the Property at the time of foreclosure may be important. For instance, the value may be an important consideration in the following analyses: (1) whether to accept a compromise proposal from a delinquent property owner; and (2) how much to bid at the foreclosure sales.

H. Amount of Bid. I will generally recommend the Association bid the entire amount due, including all attorney fees, costs and expenses. However, I will consult with you about the bidding before any foreclosure.

I. Title Related Matters. I will obtain a title certificate ("Title Certificate") showing all documents filed in the real property records of the County in which the Property is situated, including a name search of those holding title for the period beginning with the delinquent owner's initially taking title to the Property. Such Title Certificates generally cost between [AMOUNT] and [AMOUNT] [for instance, $150.00 and $200.00], but do not offer any kind of insurance or warranty as to their accuracy or completeness. If a pre-foreclosure title insurance policy is desired, you will need to make a written request to me for such a policy, since I will not obtain such a policy unless you specifically request it.

C. Lawyers Creed

[ATTACHMENT TO ATTORNEY ENGAGEMENT LETTER AGREEMENT]

TEXAS LAWYER'S CREED

THE TEXAS LAWYER'S CREED - A MANDATE FOR PROFESSIONALISM

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."

2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.

3. I commit myself to an adequate and effective pro bono program.

4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.

5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate legal means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.

2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.

3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.

4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.

6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.

7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action which is without merit.

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to

instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.

2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practical, when hearings, depositions, meetings, conferences, or closings are canceled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery

requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyer and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

D. HOA Resolution

[This form provides evidence that the HOA (either a Condominium HOA or a Subdivision HOA) has passed the appropriate resolutions for engaging the attorney for general representation and to enforce with foreclosure proceedings, if necessary, the collection of delinquent assessments.]

CERTIFICATE OF CORPORATE OFFICER
CONCERNING RESOLUTIONS FOR
ENGAGEMENT OF LEGAL SERVICES

DATE: ______________________

ASSOCIATION: **[NAME OF ASSOCIATION]**

AGREEMENT: Retain legal counsel for the purpose of general representation of the Association, including but not limited to, enforcement with foreclosure proceedings, if necessary, the collection of delinquent assessments ("Transaction") according to the terms of the Engagement Agreement with ____________________ dated ______________.

MANAGEMENT (including an address):

Names of Directors:

1. ________________________
2. ________________________
3. ________________________

Names of Officers:

1. ________________________
2. ________________________
3. ________________________
4. ________________________

The undersigned hereby certifies that the undersigned is the duly authorized officer of the Association, according to the Officer Title stated herein. As the authorized officer of the Association, I have personal knowledge of, and hereby certify to the correctness of, the following:

1. The Management shown above have been duly elected and continue to serve in those positions at the time these Resolutions were adopted.

2. The following resolutions have been adopted in accordance with the Governing Documents of the Association, and applicable law, properly made:

   RESOLVED that the Association is authorized and directed to enter into the Agreement.

   RESOLVED FURTHER, that _________________ , the Association ____________ [Official Title, such as "President"], is authorized and empowered, on behalf of the Association, to execute and deliver all documents deemed reasonably necessary and/or appropriate to cause the Association to enter into the Agreement.

3. [THIS PARAGRAPH IS APPLICABLE ONLY TO SUBDIVISION HOAs] As required by Texas Property Code §209.0051(h), the Board resolutions approving the enforcement action contemplated by the Agreement were adopted at an open board meeting in compliance with Texas Property Code

§209.0051(e). [Note Open Board Meeting Requirements: *Members shall be given notice of the date, hour, place, and general subject of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice shall be: (1) mailed to each property owner not later than the 10th day or earlier than the 60th day before the date of the meeting; or (2) provided at least 72 hours before the start of the meeting by: (A) posting the notice in a conspicuous manner reasonably designed to provide notice to property owners' association members: (i) in a place located on the association's common property or, with the property owner's consent, on other conspicuously located privately owned property within the subdivision; or (ii) on any Internet website maintained by the association or other Internet media; and (B) sending the notice by e-mail to each owner who has registered an e-mail address with the association. If an Owner keeps a registered e-mail address with the association, it is an owner's duty to update the e-mail address.*]

The foregoing resolutions are presently in full force and effect and have not been revoked or rescinded as of the date of this Certificate.

____
Print Name: ______________________________
Officer Title: _____________________________

E. Financial Information

[This is a form intended to obtain from the HOA the information needed to address the consumer debt collection information and address other statutory requirements for collection of delinquent amounts secured by real estate]

[ATTACHMENT TO ATTORNEY ENGAGEMENT LETTER AGREEMENT]
[Condominium HOA or Subdivision HOA]

FINANCIAL INFORMATION NEEDED FOR DEFAULT NOTICE
(FAIR DEBT COLLECTION PRACTICES ACT)

Effective Date: ______________________
Property Address: ____
Property Lot Description: Unit #________, __________________________________ Condo or Townhomes
Lot(s) _______, Block ________, ______________________ Subdivision

Names of Delinquent Owners (H & W): ____
____

Address (if different from Property): ____
____

1. Amount of Delinquency (Debt):
   a. Unpaid General Assessment $______________________________
   b. Accrued Unpaid Interest $______________________________
   c. Late Charges $______________________________
   d. Unpaid Special Assessment $______________________________
   e. Accrued Unpaid Interest $______________________________
   f. Late Charges $______________________________
   g. Penalties/Reimbursements $______________________________
   h. Other $______________________________

   TOTAL AMOUNT OWED $______________________________

2. Per Diem: $______________________

   a. Based on Balance of $______________________
   b. With Interest Rate of _____________________ %

3. The following amounts are needed to bring the Debt current:

   a. Delinquent Amounts $______________________________
   b. Attorney Fees [Attorney to fill in] $______________________________

AMOUNT NEEDED TO BRING THE DEBT CURRENT $______________________________

4. Last assessment paid was the payment due for (date) __________________________________.

5. If brought current through effective date, the next assessment will be due on (date) ____________________________, for (amount) $_____________________.

6. Tax Value of the Property $___________________________________.

F. Request for Title Certificate

[This form is for the purpose of allowing the attorney to request from a title insurance agency the title information needed to prepare for a prospective foreclosure]

[ATTORNEY LETTERHEAD]
[DATE]
REQUEST FOR TITLE CERTIFICATE

[TITLE COMPANY NAME & ADDRESS]

RE: Foreclosure under Association Governing Documents recorded in [RECORDING INFO], for property within the development known as [SUBDIVISION, TOWNHOME, CONDOMINIUM], concerning the following property [DESCRIBE PROPERTY] ("Property")

This will constitute my office's request for foreclosure related title services including an Abstractor's Certificate concerning the referenced Property. This will also confirm that you have advised my office of your intention to charge [AMOUNT] for the services. I have asked for the following:

1. Abstractor's Certificate.

A. Documents. An Abstractor's Certificate ("Certificate") identifying all matters filed from the date of the purchase of the Property by the person(s) within the Names to be Searched identified below, in the following records: (1) Official Real Property Records; (2) Probate Records; (3) Bankruptcy Records; (4) UCC Records; (5) Federal Tax Liens are of special importance (Copies of all Federal Tax Liens identified should be provided).

B. Names to be Searched. The following names should be searched, along with any others which you, in the course of your title search in preparing the Certificate, find to have an ownership interest in the Property: [LIST NAMES TO BE SEARCHED].

C. Form. The Certificate should identify each instrument in the chronology of their having been filed for record, and should state the date of the instrument, the date it was filed for record, the name of the instrument, the parties to it, and the relevant recording information.

2. Certificate Updates. The original Certificate is requested to assist with the preparation of the preliminary notices to the appropriate parties. In addition, two updates will be needed. The first update will be needed to ensure that any federal tax liens filed within 30 days prior to the scheduled foreclosure date are found. The second update will be needed to review the records through the date of the foreclosure sale. It is requested that the form of the update simply be the identification of any additional matters, if any, marking, re-dating, and initialing of a file copy of the Certificate, and mailing it to me.

3. Taxing Agencies. The names and addresses of all taxing agencies to which the Property is subject.

Please let me know if you have any questions. I look forward to working with you.

[SALUTATION OF ATTORNEY OR LEGAL ASSISTANT]

G. Invoice

Invoice

Condominium Association
PO Box 1234
Corpus Christi TX 78426

Date
11/14/2014

TO:
Estate of Mary Smith
% John Doe
9876 Grand Lake Dr
Dallas TX 77787

Date	Transaction	Amount
11/14/2014	*Monthly Assessment Fee*	$225.00
	Balance Due	$225.00

If amount is not paid within 30 days from the date of this invoice, a $50.00 LATE CHARGE will be assessed for the handling of late payment, and attorney fees and costs will be charged to the owner

Statement

Condominium Association
PO Box 1234
Corpus Christi TX 78426

Date
11/14/2014

TO:
Estate of Mary Smith
% John Doe
9876 Grand Lake Dr
Dallas TX 77787

Amount Due	Amount Enc

Date	Transaction	Amount	Balance
9/14/2014	*Inv #544 Due 01/01/2013 Orig Amount $225.00*	225.00	225.00
10/14/2014	*Late Charge Inv 544*	50.00	275.00
10/14/2014	*Inv #608 Due 02/01/2013 Orig Amount $225.00*	225.00	500.00
11/14/2014	*Late Charge Inv 608*	50.00	550.00

Current	1-30 Days Past Due	*31-60 Days Past Due	61-90 Days Past Due	Over 90 Days Past Due	Amount Due
0.00		275.00	275.00		550.00

H. HOA Notice of Default

[This form is intended for the condominium HOA to send to the delinquent owner after the initial invoice has remained unpaid beyond its due date. It is contemplated that the condominium HOA has not yet engaged an attorney to assist with the collection of the delinquency.]

[Association Letterhead with address and a phone number]

Effective Date: ___________________ (fill in the date mailed)

[List Names and Addresses Where the Notice is Being Sent:
Include the Property Address and the Address shown on the Appraisal District Website]

As of [DATE] ("Disclosure Date"), the outstanding balance owed ("Total Balance Owed") is itemized as follows:

"Past-Due Regular Assessments"	$_________________
"Past-Due Special Assessments"	$_________________
"Late Fees"	$_________________
"Accrued Interest"	$_________________
"Costs of Collection"	$_________________
"Fines"	$_________________
"Total Balance Owed"	$_________________

Demand is hereby made for payment in full of the Total Balance Owed, and any further increases as explained below, to be received by the Association no later than 30 days from the date of this Notice.

The Total Balance Owed is subject to further increases for any additional assessments becoming due after the Disclosure Date. To obtain the exact amount due on the date you plan to make payment, please contact the Association by calling [NAME] at [PHONE NUMBER] and/or communicating by email to [EMAIL ADDRESS] or by regular mail to [MAILING ADDRESS]. If, for any reason, you are unable to obtain the exact amount of the amount due at the time of your proposed full payment, you should pay the Total Balance Owed shown, and we will inform you of the additional amounts owing before accepting your payment.

If payment of the Total Balance Owed is not received in full at the Association's address shown above, within 30 days of the Effective Date of this notice: (a) the Association intends to take further action against you to collect the amounts owed, including all amounts accruing from and after the Effective Date of this notice; and (b) you will be charged with reasonable attorney's fees and reasonable costs incurred by the Association relating to collecting the amounts you owe.

[salutation]

I. Attorney Notice of Intent

[This form is intended to be the first letter sent to the delinquent owner by the condominium HOA's attorney notifying the delinquent owner of the default and the intention to foreclose if the default is not cured]

ATTORNEY LETTERHEAD

Demand for Payment & Notice of Intent to Foreclose
[Assessments of Condominium POA]

DATE: [DATE OF MAILING]

DEFINED TERMS

DEBTORS (including last known address as shown by the records of the Association):

[NAME & ADDRESS] Certified Mail
Return Receipt Requested
SAME LETTER SENT REGULAR MAIL

ANY LIENHOLDER(S) ENTITLED TO NOTICE:

[NAME & ADDRESS OF ANY LIENHOLDERS WHICH GAVE NOTICE TO THE ASSOCIATION OF LIENHOLDER'S REQUEST FOR NOTICE OF FORECLOSURE - See TPC §82.113(h) - requires the HOA to notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the POA a written request for notification of the unit owner's monetary default or the POA's intent to foreclose its lien. Determine whether the Governing Documents require lienholders to be notified.] [OR, IF NO LIENHOLDERS WERE IDENTIFIED AT THE TIME THIS NOTICE WAS SENT TO THE DEBTORS, DELETE]

ASSOCIATION: [NAME & ADDRESS OF CONDOMINIUM ASSOCIATION]

SECURITY PROPERTY: Property located at [ADDRESS] being more particularly described as follows: [LEGAL DESCRIPTION]

ASSESSMENTS:

Pursuant to Texas Property Code §82.113, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the Association by the unit owner or levied against the unit by the Association, all of which are enforceable as assessments.

ASSESSMENTS DUE:

All assessments which are owed to the Association as described in the Debt and Default Information herein, together will all additional amounts accruing and owed through the time of full payment, pursuant to the Governing Documents and law.

GOVERNING DOCUMENTS:

Declaration of Condominium filed for record on [DATE] under Document No. [RECORDING DATA], Official Public Records of [NAME OF COUNTY] County, Texas, including any amendments thereto and all other recorded documents governing, evidencing, administering, or securing Association assessments.

DEFAULT: Failure to pay the Assessments Due.

DEBT AND DEFAULT INFORMATION ["Disclosure Date" [DATE ON WHICH FINANCIAL DATA IS BASED]:

1. Past due regular assessments in the amount of $[AMOUNT]
2. Past due insurance assessments in the amount of $[AMOUNT]
3. Attorney Fees in the amount of $[AMOUNT]
4. Late charges in the amount of $[AMOUNT]
5. Unpaid accrued interest of $[AMOUNT]
6. Any assessments accruing after the Disclosure Date, but before payment is made, will be added to the Assessments Due.

Total amount of Assessments Due as of the Disclosure Date is $[AMOUNT]

DEBTOR'S DEADLINE TO AVOID NOTICE OF FORECLOSURE:

3:00 P.M. on [DATE] (which is at least 30 days after the date this letter is properly mailed)

NOTICE

1. Defined Terms. The words and phrases have the meanings attributed to them in the Defined Terms, and where words or phrases are otherwise stated to reasonably indicate an intention to serve as a defined term. When the context requires, singular nouns and pronouns include the plural.

2. Collection of Debt. This law firm represents the Association with respect to the claims it has against you. THIS FIRM IS A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

3. Demand for Payment, Debtor's Default & Right to Cure Default. Payment of the Assessments Due is demanded. You are in Default as that term is defined in this letter. You are entitled to cure the Default at any time before the foreclosure has been completed, by paying the total Assessments Due in the required manner.

4. Debtor's Right to Cure & Right to Avoid Notice of Foreclosure. You have the right to cure the Default before the Debtor's Deadline to Avoid Notice of Foreclosure. If you fail to cure the Default before the Debtor's Deadline to Avoid Notice of Foreclosure, the Association will: (1) give notice of foreclosure to commence proceedings to foreclose the lien and any security interests existing under the Governing Documents (foreclosure of such lien and any security interests will be by a sale of the Security Property); and (2) exercise some or all of the other rights and remedies available to the Association under the Governing Documents, at law, or in equity.

5. Attorney Fees and Costs. You are liable for reasonable attorney fees and other reasonable costs incurred by the Association relating to collecting amounts due to the Association for enforcing the Governing Documents administered by the Association.

6. Debt Collection Disclosures. The names of your creditor and amount of the debt are set forth above. Unless, within thirty days after your receipt of this notice, you dispute the validity of the debt or any portion thereof, we will assume the debt to be valid. If, within that thirty-day period, you notify us in writing that the debt or any portion thereof is disputed, we will obtain verification of the debt or a copy of a judgment, if any, and we will mail to you a copy of such verification or judgment. If the original creditor is different from the creditor named above, then upon your written request within that same thirty-day period we will provide you with the name and address of the original creditor.

7. Effect of Request for Validation on Deadlines. The Debtor's Deadline to Avoid Notice of Foreclosure may expire before expiration of the thirty-day period for you to validate the debt, which thirty-day period begins with your receipt of this letter. The law does not require me to wait beyond the until the end of the thirty-day validation period that begins with your receipt of this letter before giving notice of foreclosure sale. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day validation period that begins with your receipt of this letter, the law requires me to suspend my efforts to collect the debt until I mail the requested information to you.

8. Further Increases. The amount necessary to cure the Default is subject to further increases for any additional assessments becoming due after the Disclosure Date. To obtain the exact amount of Assessments Due on the date you plan to make payment curing the Default, please contact the undersigned or my staff. On the date of payment you may obtain the total amount of Assessments Due as of that date by calling the phone number on the letterhead of this letter. The information will be provided with reasonable promptness, and will likely require information to be obtained by this office and provided to you by calling you back. If, for any reason, you are unable to obtain the exact amount of Assessments Due at the time of your proposed full payment, you should pay the amount of Assessments Due as stated in this letter, and we will inform you of the additional amounts owing before accepting your payment.

9. Terms of Letter Not Changed Except by Signed Writing. Please understand that no communication, written or oral, that any Debtor has had or may have with the Association concerning any modification, renewal, extension, or restructure of the Assessments Due, including any deed in lieu of foreclosure, waiver of deficiency or agreed foreclosure, in any way modifies this letter or constitutes consent to the nonpayment of the assessments, or a waiver by the Association of any of the remedies described in this letter. There is currently no modification, renewal, extension, or settlement agreement between the Debtor and the Association with regard to the Assessments Due or the Governing Documents; furthermore, no proposals made by the Debtor to the Association are effective unless and until they are reduced to writing and signed by an authorized representative of the Association. Nothing contained in this letter is intended to waive any default or event of default; waive any rights, remedies, or recourses available to the Association; or be an election of remedies resulting from any default that may exist with respect to the Governing Documents.

10. Active Military Duty Notice. Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately. I request your written notice to provide the exact name of such member, and the member's date of birth.

11. Required Form and Receipt of Payment. Payment must be made in cash, cash equivalent, wire transfer, or by cashier's check at this office. Payment will be considered made only when the accepted amount and form of payment is actually and physically received.

12. Request Responses be made to the Undersigned. Please address all comments and correspondence directly to the undersigned according to the contact information on the letterhead of this letter.

[ATTORNEY SALUTATION]

J. Attorney Notice of Foreclosure

[This form gives notice of the schedule foreclosure, and attaches the Notice of Trustee's Sale which has been filed and posted in the appropriate places.]

ATTORNEY LETTERHEAD

NOTICE OF FORECLOSURE

DATE: [DATE OF MAILING]

DEFINED TERMS

DEBTORS (including last known address as shown by the records of the Holder):

[DEBTORS NAMES & ADDRESSES] Certified Mail
Return Receipt Requested
SAME LETTER SENT REGULAR MAIL

ASSOCIATION: [NAME & ADDRESS OF CONDOMINIUM HOA]

ASSESSMENTS:

Pursuant to Texas Property Code §82.113, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the Association by the unit owner or levied against the unit by the Association, all of which are enforceable as assessments.

ASSESSMENTS DUE:

All assessments which are owed to the Association as described in the Debt and Default Information previously provided to you by the Notice of Intent, together will all additional amounts accruing and owed through the time of full payment, pursuant to the Governing Documents and law.

GOVERNING DOCUMENTS: [TITLE OF DECLARATION] filed for record on [DATE] under Document No. [RECORDING DATA], Official Public Records of [NAME OF COUNTY] County, Texas, including any amendments thereto and all other recorded documents governing, evidencing, administering, or securing Association assessments.

SECURITY PROPERTY: Property known as [ADDRESS] and legally described as follows: [LEGAL DESCRIPTION]

The undersigned represents the Association. You are in default of your obligations under the Governing Documents. Proceedings have been initiated to foreclose and sell the Security Property under the power of sale in the Governing Documents at public auction on **TUESDAY, [DATE]**. The earliest time at which the sale will occur is [EARLIEST TIME, e.g. 10:00 a.m., and the sale shall begin not later than three hours after that time. The sale will take place at the County Courthouse in [NAME OF COUNTY] County, Texas, in the area of the courthouse designated by the commissioners court of such county as the place where public sales of real property under a power of sale conferred by a valid lien are to take place. Enclosed with this letter is a copy of the NOTICE OF TRUSTEE'S SALE on the above mentioned Security Property.

The unpaid balance, requirements for satisfaction of the obligations imposed upon you by the Governing Documents, and fees needed to avoid foreclosure may be obtained by contacting the undersigned.

You are cautioned that, whether you elect to mail or personally deliver such sums to the Association, such sums must be actually received before the applicable deadline(s). Any failure to actually deliver such sums on or before the applicable deadline(s) because of any act or omission by you, the U. S. Postal Service, or any other person or entity upon whom you rely, shall not be considered an excuse.

In the event the Security Property is sold at foreclosure for an amount not sufficient to satisfy the entire amount owing, including attorney's fees, trustee's fees, and expenses incurred in connection therewith (unless otherwise agreed by the Association in writing, or unless you have been legally discharged from liability for the Debt), you will be liable for the deficiency.

NOTICE:

1. Defined Terms. The words and phrases have the meanings attributed to them in the Defined Terms, including the Defined Terms in the prior notice entitled Demand for Notice & Notice of Intent to Foreclose ("Notice of Intent"), and where words or phrases are otherwise stated to reasonably indicate an intention to serve as a defined term. When the context requires, singular nouns and pronouns include the plural.

2. Collection of Debt. This law firm represents the Association with respect to the claims it has against you. THIS FIRM IS A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

3. Demand for Payment, Debtor's Default & Right to Cure Default. Payment of the Assessments Due is demanded. You are in Default as that term is defined in the prior Notice of Intent. You are entitled to cure the Default at any time before the foreclosure has been completed, by paying the total Assessments Due in the required manner.

4. Attorney Fees and Costs. You are liable for reasonable attorney fees and other reasonable costs incurred by the Association relating to collecting amounts due to the Association for enforcing the Governing Documents administered by the Association.

5. Further Increases. The amount necessary to cure the Default is subject to further increases for any additional assessments becoming due after the Disclosure Date in a prior notice to you. To obtain the exact amount of Assessments Due on the date you plan to make payment curing the Default, please contact the undersigned or my staff. On the date of payment you may obtain the total amount of Assessments Due as of that date by calling the phone number on the letterhead of this letter. The information will be provided with reasonable promptness, and will likely require information to be obtained by this office and provided to you by calling you back. If, for any reason, you are unable to obtain the exact amount of Assessments Due at the time of your proposed full payment, you should pay the amount of Assessments Due as stated in the Notice of Intent, and we will inform you of the additional amounts owing before accepting your payment.

6. Terms of Letter Not Changed Except by Signed Writing. Please understand that no communication, written or oral, that any Debtor has had or may have with the Association concerning any modification, renewal, extension, or restructure of the Assessments Due, including any deed in lieu of foreclosure, waiver of deficiency or agreed foreclosure, in any way modifies this letter or constitutes consent to the nonpayment of the assessments, or a waiver by the Association of any of the remedies described in this letter or the prior Notice of Intent. There is currently no modification, renewal, extension, or settlement agreement between the Debtor and the Association with regard to the Assessments Due or the Governing Documents; furthermore, no proposals made by the Debtor to the Association are effective unless and until they are reduced to writing and signed by an authorized representative of the Association. Nothing contained in this letter is intended to waive any default or event of default; waive any rights, remedies, or recourses available to the Association; or be an election of remedies resulting from any default that may exist with respect to the Governing Documents.

7. Active Military Duty Notice. Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately. I request your written notice to provide the exact name of such member, and the member's date of birth.

8. Required Form and Receipt of Payment. Payment must be made in cash, cash equivalent, wire transfer, or by cashier's check at this office. Payment will be considered made only when the accepted amount and form of payment is actually and physically received.

9. Request Responses be made to the Undersigned. Please address all comments and correspondence directly to the undersigned according to the contact information on the letterhead of this letter.

[ATTORNEY SALUTATION]

Enclosure (NOTICE OF TRUSTEE'S SALE)

K. Invoice

Invoice

Subdivision Association
PO Box 1234
Corpus Christi TX 78426

Date
11/14/2014

TO:
Estate of Mary Smith % John Doe 9876 Grand Lake Dr Dallas TX 77787

Date	Transaction	Amount
11/14/2014	*Monthly Assessment Fee*	$225.00
	Balance Due	$225.00

If amount is not paid within 30 days from the date of this invoice, a $50.00 LATE CHARGE will be assessed for the handling of late payment, and attorney fees and costs will be charged to the owner

Statement

Subdivision Association
PO Box 1234
Corpus Christi TX 78426

Date
11/14/2014

TO:
Estate of Mary Smith % John Doe 9876 Grand Lake Dr Dallas TX 77787

Amount Due	Amount Enc

Date	Transaction	Amount	Balance
9/14/2014	*Inv #544 Due 01/01/2013 Orig Amount $225.00*	225.00	225.00
10/14/2014	*Late Charge Inv 544*	50.00	275.00
10/14/2014	*Inv #608 Due 02/01/2013 Orig Amount $225.00*	225.00	500.00
11/14/2014	*Late Charge Inv 608*	50.00	550.00

Current	1-30 Days Past Due	*31-60 Days Past Due	61-90 Days Past Due	Over 90 Days Past Due	Amount Due
0.00		275.00	275.00		550.00

L. HOA Notice of Default

[This form is intended for the subdivision HOA to send to the delinquent owner after the initial invoice has remained unpaid beyond its due date. It is contemplated that the subdivision HOA has not yet engaged an attorney to assist with the collection of the delinquency.]

[Association Letterhead with address and a phone number]

Effective Date: ___________________ (fill in the date mailed)

[List Names and Addresses Where the Notice is Being Sent:
Include the Property Address and the Address shown on the Appraisal District Website]

[SEND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO EACH DEBTOR as required by TPC §209.0064]

As of [DATE ON WHICH AMOUNTS ARE CALCULATED] (the "Disclosure Date"), the Total Balance Owed is set forth and itemized as follows [NOTE: Itemization is required by TPC §209.0064]:

Past-Due Regular Assessments:	$_________________
Past-Due Special Assessments:	$_________________
Late Fees:	$_________________
Accrued Interest:	$_________________
Costs of Collection:	$_________________
Fines:	$_________________
Other: ____________________________	$_________________
Total Balance Owed:	$_________________

Demand is hereby made for payment in full of the Total Balance Owed, and any further increases as explained below, to be received by the Association no later than 30 days from the date of this Notice. [NOTE: This format complies with the “date certain” requirement of TPC §209.008].

The Total Balance Owed is subject to further increases for any additional assessments becoming due after the Disclosure Date. To obtain the exact amount due on the date you plan to make payment, please contact the Association by calling [NAME] at [PHONE NUMBER] and/or communicating by email to [EMAIL ADDRESS] or by regular mail to [MAILING ADDRESS]. If, for any reason, you are unable to obtain the exact amount of the amount due at the time of your proposed full payment, you should pay the Total Balance Owed shown, and we will inform you of the additional amounts owing before accepting your payment.

If the owner is entitled to a payment plan, ADD

EITHER THIS:

You may be eligible to pay off your outstanding balance under a payment plan according to the terms of the Association's Alternative Payment Schedule Guidelines which are included in the Association’s Governing Documents. For more information regarding the availability of a payment plan, please contact us.

OR THIS:

The Association invites from you a proposal to repay all amounts due according to the attached Payment Plan Agreement, which terms are consistent with the Association’s payment plan guidelines. If you wish to propose the Payment Plan Agreement, you must: (a) sign the Payment Plan Agreement; (b) enclosed your first installment payment according to the terms of the Payment Plan Agreement; and (c) deliver it to the

Association for physical receipt by the Association of your full payment and the Payment Plan Agreement containing your original signature, within 30 days from the Effective Date of this notice. If you comply with these requirements, the Association will accept the proposed Payment Plan Agreement by signing the Payment Plan Agreement and returning a copy to you.

[NOTE: TPC §209.0064 appears to require the payment plan option be provided, if the owner is entitled to it, as a pre-condition to requiring the owner to reimburse the subdivision HOA for attorney fees if the owner fails to cure the delinquency within the time given by this notice]

If payment of the Total Balance Owed is not received in full at the Association's address shown above, within 30 days of the Effective Date of this notice, and you have not otherwise entered into a Payment Plan Agreement to pay off such balance: (a) the Association intends to take further action against you to collect the amounts owed, including all amounts accruing from and after the Effective Date of this notice; and (b) you will be charged with reasonable attorney's fees and reasonable costs incurred by the Association relating to collecting the amounts you owe.

[salutation]

M. Payment Plan Agreement

[This form PAYMENT PLAN AGREEMENT is intended to be completed by the Association prior to sending it to the owner accompanying the demand of the subdivision HOA for payment of delinquent amounts. This particular plan includes the minimum period of three months for payment of the delinquent amounts. The subdivision HOA is free to increase the time for repayment to a period of up to 18 months. See TPC §209.0062]

PAYMENT PLAN AGREEMENT
[3 Equal Payments over period of 90 days]

Effective Date: ______________________________

Association: ______________________________

Delinquent Owner: ______________________________

Property Address: ______________________________
____

Administration Cost: $______________________________

Total Balance Owed
(Including Administration Cost): $______________________________

Payment Address: ______________________________
____

The Delinquent Owner promises to pay to the Association the Total Balance Owed by making three equal installment payments of $_________ [+ 1/3 of additional amounts incurred] each:

1. The first installment payment will be made in order that the Association physically receive such payment at the Payment Address no later than thirty (30) days after the stated Effective Date;

2. The second installment payment will be made in order that the Association receive such payment at the Payment Address no later than sixty (60) days after the stated Effective Date; and

3. The third installment payment will be made in order that the Association receive such payment at the Payment Address no later than ninety (90) days after the stated Effective Date.

The Delinquent Owner agrees that these payments will be payable to the Association, made without notice or invoice from the Association, and will be paid in addition to the assessments accruing on the Property after the date of this Agreement.

Delinquent Owner:
__________________________________ Date Signed: ________________________
Printed Name: ____________________

ACCEPTED BY:
____________________________________ on behalf of the Association
Print Name: __________________________

N. Attorney Notice of Intent

[This form is the Notice of Intent which informs the delinquent owner that the subdivision HOA will commence foreclosure proceedings if the delinquency is not paid by the stated deadline]

ATTORNEY LETTERHEAD

Demand for Notice & Notice of Intent to Foreclose
[Assessments of Subdivision HOA (not a condominium)]

DATE: [DATE OF MAILING]

<u>DEFINED TERMS</u>:

DEBTORS (including last known address as shown by the records of the Association):

[DEBTORS NAMES & ADDRESSES]	Certified Mail Return Receipt Requested SAME LETTER SENT REGULAR MAIL
ASSOCIATION:	[NAME & ADDRESS OF SUBDIVISION HOA]
SECURITY PROPERTY:	Property located at [ADDRESS] being more particularly described as follows: [LEGAL DESCRIPTION]

ASSESSMENTS:

Assessments due as described in the Debt and Default Information herein and pursuant to the Governing Documents, and as defined by the Texas Residential Property Owners Protection Act (Texas Property Code Chapter 209).

ASSESSMENTS DUE:

All assessments which are owed to the Association as described in the Debt and Default Information herein, together will all additional amounts accruing and owed through the time of full payment, pursuant to the Governing Documents and law.

GOVERNING DOCUMENTS:

[TITLE OF DECLARATION] filed for record on [DATE] under Document No. [RECORDING DATA], Official Public Records of [NAME OF COUNTY] County, Texas, including any amendments thereto and all other recorded documents governing, evidencing, administering, or securing Association assessments.

DEFAULT: Failure to pay the Assessments Due.

DEBT AND DEFAULT INFORMATION ["<u>Disclosure Date</u>" " [DATE ON WHICH FINANCIAL DATA IS BASED]:

1. Past due regular assessments in the amount of $[AMOUNT]
2. Past due insurance assessments in the amount of $[AMOUNT]
3. Attorney Fees in the amount of $[AMOUNT]
4. Late charges in the amount of $[AMOUNT]
5. Unpaid accrued interest of $[AMOUNT]

6. Any assessments accruing after the Disclosure Date, but before payment is made, will be added to the Assessments Due.

Total amount of Assessments Due as of the Disclosure Date is $[AMOUNT]

DEBTOR'S DEADLINE TO AVOID FORECLOSURE PROCEEDINGS:

3:00 p.m. on [DATE] (which is at least 30 days after the date this letter is properly mailed)

OPTIONAL [If the HOA has not previously offered a Payment Plan according to the HOA Payment Plan Guidelines] -
PROPOSED PAYMENT PLAN:

To repay All Assessments Due, according to the Debt and Default Information, in three equal monthly installments of principal, with interest accruing at the interest rate of [STATE THE INTEREST RATE, e.g. 11%] per annum (the "Delinquent Rate"), and the additional sum of [STATE AMOUNT ADDED FOR ADMINISTRATION OF PAYMENT PLAN, e.g. $180.00] added as the costs associated with administering this Payment Plan.

NOTICE:

1. Defined Terms. The words and phrases have the meanings attributed to them in the Defined Terms, and where words or phrases are otherwise stated to reasonably indicate an intention to serve as a defined term. When the context requires, singular nouns and pronouns include the plural.

2. Collection of Debt. This law firm represents the Association with respect to the claims it has against you. THIS FIRM IS A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

[IF NO PROPOSED PAYMENT PLAN WILL BE INCLUDED IN THE DEMAND LETTER]
3. Demand for Payment, Debtor's Default & Right to Cure Default. Payment of the Assessments Due is demanded. You are in Default as that term is defined in this letter. You are entitled to cure the Default at any time before the foreclosure has been completed, by paying the total Assessments Due in the required manner.

[IF A PROPOSED PAYMENT PLAN WILL BE INCLUDED IN THE DEMAND LETTER]
3. Demand for Payment, Debtor's Default & Right to Cure Default. Payment of the Assessments Due is demanded. You are in Default as that term is defined in this letter. You are entitled to cure the Default at any time before the foreclosure has been completed, by paying the total Assessments Due in the required manner. In the alternative, you may avoid foreclosure proceedings by accepting the Proposed Payment Plan. To accept the Payment Plan Agreement, you must signing and deliver the signed Payment Plan Agreement containing your signature and the initial payment, paid in the required manner, to the undersigned for physical receipt no later than 30 days after the date of this letter.

4. Debtor's Right to Cure & Right to Avoid Foreclosure Proceedings. You have the right to cure the Default before the Debtor's Deadline to Avoid Foreclosure Proceedings. If you fail to cure the Default before the Debtor's Deadline to Avoid Foreclosure Proceedings, the Association will: (1) file an Application for an Expedited order under TRCP Rule 736, and upon obtaining such an order; (2) give notice of foreclosure to commence proceedings to foreclose the lien and any security interests existing under the Governing Documents (foreclosure of such lien and any security interests will be by a sale of the Security Property); and (3) exercise some or all of the other rights and remedies available to the Association under the Governing Documents, at law, or in equity.

5. Attorney Fees and Costs. You are liable for reasonable attorney fees and other reasonable costs incurred by the Association relating to collecting amounts due to the Association for enforcing the Governing Documents administered by the Association.

6. Debt Collection Disclosures. The names of your creditor and amount of the debt are set forth above. Unless, within thirty days after your receipt of this notice, you dispute the validity of the debt or any portion thereof, we will assume the debt to be valid. If, within that thirty-day period, you notify us in writing that the debt or any portion thereof is disputed, we will obtain verification of the debt or a copy of a judgment, if any, and we will mail to you a copy of such verification or judgment. If the original creditor is different from the creditor named above, then upon your written request within that same thirty-day period we will provide you with the name and address of the original creditor.

7. Effect of Request for Validation on Deadlines. The Debtor's Deadline to Avoid Foreclosure Proceedings may expire before expiration of the thirty-day period for you to validate the debt, which thirty-day period begins with your receipt of this letter. The law does not require me to wait beyond the until the end of the thirty-day validation period that begins with your receipt of this letter before commencing foreclosure proceedings. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day validation period that begins with your receipt of this letter, the law requires me to suspend my efforts to collect the debt until I mail the requested information to you.

8. Further Increases. The amount necessary to cure the Default is subject to further increases for any additional assessments becoming due after the Disclosure Date. To obtain the exact amount of Assessments Due on the date you plan to make payment curing the Default, please contact the undersigned or my staff. On the date of payment you may obtain the total amount of Assessments Due as of that date by calling the phone number on the letterhead of this letter. The information will be provided with reasonable promptness, and will likely require information to be obtained by this office and provided to you by calling you back. If, for any reason, you are unable to obtain the exact amount of Assessments Due at the time of your proposed full payment, you should pay the amount of Assessments Due as stated in this letter, and we will inform you of the additional amounts owing before accepting your payment.

9. Terms of Letter Not Changed Except by Signed Writing. Please understand that no communication, written or oral, that any Debtor has had or may have with the Association concerning any modification, renewal, extension, or restructure of the Assessments Due, including any deed in lieu of foreclosure, waiver of deficiency or agreed foreclosure, in any way modifies this letter or constitutes consent to the nonpayment of the assessments, or a waiver by the Association of any of the remedies described in this letter. There is currently no modification, renewal, extension, or settlement agreement between the Debtor and the Association with regard to the Assessments Due or the Governing Documents; furthermore, no proposals made by the Debtor to the Association are effective unless and until they are reduced to writing and signed by an authorized representative of the Association. Nothing contained in this letter is intended to waive any default or event of default; waive any rights, remedies, or recourses available to the Association; or be an election of remedies resulting from any default that may exist with respect to the Governing Documents.

10. Active Military Duty Notice. Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately. I request your written notice to provide the exact name of such member, and the member's date of birth.

11. Required Form and Receipt of Payment. Payment must be made in cash, cash equivalent, wire transfer, or by cashier's check at this office. Payment will be considered made only when the accepted amount and form of payment is actually and physically received.

12. Request Responses be made to the Undersigned. Please address all comments and correspondence directly to the undersigned according to the contact information on the letterhead of this letter.

[ATTORNEY SALUTATION]

enc: (Determine whether the subdivision HOA has previously offered a payment plan to the owner; if the owner is eligible, and a payment plan has not been offered, a payment plan should be attached to this letter and the optional provision, which includes the Payment Plan Agreement, should be inserted in the letter)

O. Attorney Notice of Foreclosure

[This form gives notice of the schedule foreclosure, and attaches the Notice of Trustee's Sale which has been filed and posted in the appropriate places.]

ATTORNEY LETTERHEAD

NOTICE OF FORECLOSURE

DATE: [DATE OF MAILING]

DEFINED TERMS

DEBTORS (including last known address as shown by the records of the Holder):

[DEBTORS NAMES & ADDRESSES] Certified Mail
Return Receipt Requested
SAME LETTER SENT REGULAR MAIL

ASSOCIATION: [NAME & ADDRESS OF SUBDIVISION HOA]

SECURITY PROPERTY: Property known as [ADDRESS] and legally described as follows: [LEGAL DESCRIPTION]

ASSESSMENTS:

Assessments due as described in the Debt and Default Information stated in the prior Notice of Intent and pursuant to the Governing Documents, and as defined by the Texas Residential Property Owners Protection Act (Texas Property Code Chapter 209).

ASSESSMENTS DUE:

All assessments which are owed to the Association as described in the Debt and Default Information in the prior Notice of Intent, together will all additional amounts accruing and owed through the time of full payment, pursuant to the Governing Documents and law.

GOVERNING DOCUMENTS:

[TITLE OF DECLARATION] filed for record on [DATE] under Document No. [RECORDING DATA], Official Public Records of [NAME OF COUNTY] County, Texas, including any amendments thereto and all other recorded documents governing, evidencing, administering, or securing Association assessments.

DEFAULT: Failure to pay the Assessments Due.

The undersigned represents the Association. You are in default of your obligations under the Governing Documents. Proceedings have been initiated to foreclose and sell the Security Property under the power of sale in the Governing Documents at public auction on **TUESDAY, [DATE]**. The earliest time at which the sale will occur is [EARLIEST TIME, e.g. 10:00 a.m., and the sale shall begin not later than three hours after that time. The sale will take place at the County Courthouse in [NAME OF COUNTY] County, Texas, in the area of the courthouse designated by the commissioners court of such county as the place where public sales of real property under a power of sale conferred by a valid lien are to take place. Enclosed with this letter is a copy of the NOTICE OF TRUSTEE'S SALE on the above mentioned Security Property.

The unpaid balance, requirements for satisfaction of the obligations imposed upon you by the Governing Documents, and fees needed to avoid foreclosure may be obtained by contacting the undersigned.

You are cautioned that, whether you elect to mail or personally deliver such sums to the Association, such sums must be actually received before the applicable deadline(s). Any failure to actually deliver such sums on or before the applicable deadline(s) because of any act or omission by you, the U. S. Postal Service, or any other person or entity upon whom you rely, shall not be considered an excuse.

In the event the Security Property is sold at foreclosure for an amount not sufficient to satisfy the entire amount owing, including attorney's fees, trustee's fees, and expenses incurred in connection therewith (unless otherwise agreed by the Association in writing, or unless you have been legally discharged from liability for the Debt), you will be liable for the deficiency.

NOTICE:

1. Defined Terms. The words and phrases have the meanings attributed to them in the Defined Terms, including the Defined Terms in the prior notice entitled Demand for Notice & Notice of Intent to Foreclose ("Notice of Intent"), and where words or phrases are otherwise stated to reasonably indicate an intention to serve as a defined term. When the context requires, singular nouns and pronouns include the plural.

2. Collection of Debt. This law firm represents the Association with respect to the claims it has against you. THIS FIRM IS A DEBT COLLECTOR. WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

3. Demand for Payment, Debtor's Default & Right to Cure Default. Payment of the Assessments Due is demanded. You are in Default as that term is defined in the prior Notice of Intent. You are entitled to cure the Default at any time before the foreclosure has been completed, by paying the total Assessments Due in the required manner.

4. Attorney Fees and Costs. You are liable for reasonable attorney fees and other reasonable costs incurred by the Association relating to collecting amounts due to the Association for enforcing the Governing Documents administered by the Association.

5. Further Increases. The amount necessary to cure the Default is subject to further increases for any additional assessments becoming due after the Disclosure Date in a prior notice to you. To obtain the exact amount of Assessments Due on the date you plan to make payment curing the Default, please contact the undersigned or my staff. On the date of payment you may obtain the total amount of Assessments Due as of that date by calling the phone number on the letterhead of this letter. The information will be provided with reasonable promptness, and will likely require information to be obtained by this office and provided to you by calling you back. If, for any reason, you are unable to obtain the exact amount of Assessments Due at the time of your proposed full payment, you should pay the amount of Assessments Due as stated in the Notice of Intent, and we will inform you of the additional amounts owing before accepting your payment.

6. Terms of Letter Not Changed Except by Signed Writing. Please understand that no communication, written or oral, that any Debtor has had or may have with the Association concerning any modification, renewal, extension, or restructure of the Assessments Due, including any deed in lieu of foreclosure, waiver of deficiency or agreed foreclosure, in any way modifies this letter or constitutes consent to the nonpayment of the assessments, or a waiver by the Association of any of the remedies described in this letter or the prior Notice of Intent. There is currently no modification, renewal, extension, or settlement agreement between the Debtor and the Association with regard to the Assessments Due or the Governing Documents; furthermore, no proposals made by the Debtor to the Association are effective unless and until they are reduced to writing and signed by an authorized representative of the Association. Nothing contained in this letter is intended to waive any default or event of default; waive any rights, remedies, or recourses available to the Association; or be an election of remedies resulting from any default that may exist with respect to the Governing Documents.

7. Active Military Duty Notice. Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately. I request your written notice to provide the exact name of such member, and the member's date of birth.

8. Required Form and Receipt of Payment. Payment must be made in cash, cash equivalent, wire transfer, or by cashier's check at this office. Payment will be considered made only when the accepted amount and form of payment is actually and physically received.

9. Request Responses be made to the Undersigned. Please address all comments and correspondence directly to the undersigned according to the contact information on the letterhead of this letter.

[ATTORNEY SALUTATION]

Enclosure (NOTICE OF TRUSTEE'S SALE)

DAVID Z. CONOLY, P.C.

Attorney and Counselor at Law
1930 GLENOAK DRIVE, CORPUS CHRISTI, TX 78418
PHONE: (361) 937-6400; FAX (361) 937-6846
E-Mail: dzc@dzclaw.com

P. Notice to IRS of Foreclosure Sale

DAVID Z. CONOLY
Board Certified by the Texas Board of Legal Specialization in Commercial Real Estate Law, Residential Real Estate Law, and Farm & Ranch Real Estate Law

SID LAWRENCE, III
Of Counsel
Board Certified by the Texas Board of Legal Specialization in Commercial Real Estate Law and Residential Real Estate Law

November 14, 2014

NOTICE OF NONJUDICIAL SALE OF PROPERTY

>>CHECK ADDRESS WITH IRS PUBLICATION 4235>>

Internal Revenue Service
Attn: Collections Advisory Group Manager
300 East Eighth Street
MAIL STOP 5021 AUS
Austin, Texas 78701

Certified Mail
Return Receipt Requested

RE: Notice of Nonjudicial Sale of Property; My File No. FIELD(19)

This letter constitutes notice ("Notice") under Internal Revenue Code Section 7425(c) and IRS Publications 786 and 4235. The real and personal property ("Property") described below will be sold at public auction according to Texas Property Code Section 51.002 and Texas Business and Commerce Code Section 9.610.

The Property is encumbered by a >**CHOOSE ONE** deed of trust lien **OR** >property owner association assessment lien>> and is being non-judicially foreclosed pursuant to the authority granted in the >**CHOOSE ONE** Deed of Trust dated >, recorded under Document No. >, Official Public Records of > County, Texas **OR** >Declaration of Covenants, Conditions, and Restrictions dated >, recorded under Document No. >, Official Public Records of > County, Texas, including any amendments thereto.>>

The Property is subject to a Notice of Federal Tax Lien (a copy of which is enclosed with this Notice).

1. Information Submitted By: DAVID Z. CONOLY, Attorney at Law
1930 Glenoak Drive
Corpus Christi, Texas 78418
(361) 937-6400

2. Information Submitted on Behalf of: >(name and address of lienholder)

3. Information from Notice of Federal Tax Lien:

   a. Name of the IRS area office or place where notice was prepared and signed: >

   b. Taxpayer name and address: >

   c. Date and place where notice of lien was filed: >

4. Property to be Sold:

Legal Description - FIELD(7)

Street Address - FIELD(21)

5. Date, Time and Place and Terms of Sale of Property:

Date of Sale: >

Earliest Time of Sale of Property: >10:00 a.m. OR 1:00 p.m., or within 3 hours after that time

Place of Sale of Property: At the County Courthouse in > County, Texas, in the area of the courthouse designated by the commissioners court of such county as the place where public sales of real property under a power of sale conferred by a deed of trust or other contract lien are to take place.

Terms of Sale: To the Highest Bidder for Cash.

6. Approximate Principal and Interest Amount Outstanding on Debt:

Principal Amount: $>

Accrued Interest: $>

Amount of Interest Accruing Daily: $>

Estimated Legal Fees and Expenses: $>

>>7. Reasons the property is liable to perish or become greatly reduced in value if kept a minimum of 25 days, or reasons it cannot be kept for that period of time without incurring great expense

7. Request for Acknowledgment of Receipt of This Notice:

Please acknowledge your receipt of this Notice by executing the enclosed duplicate original in the space provided below and returning it to the undersigned in the self-addressed, stamped envelope provided.

Respectfully submitted,

David Z. Conoly

Page 2 of 3

lz

cc: FIELD(22)

Enclosures - Notice of Federal Tax Lien
Self-Address, Stamped Envelope

RECEIVED AS OF ____________________, 20>.

THE PRECEDING NOTICE IS ADEQUATE TO SATISFY THE REQUIREMENTS OF 26 C.F.R. §301.7425 AND IRS PUBLICATIONS 786 AND 4235.

INTERNAL REVENUE SERVICE

By:_________________________________
Name:______________________________
Title:________________________________